Before the
Federal Communications Commission
Washington, DC 20554

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| In the Matter of | ) | |
| | ) | |
| Connect America Fund | ) | WC Docket No. 10-90 |
| | ) | |
| A National Broadband Plan for Our Future | ) | GN Docket No. 09-51 |
| | ) | |
| Establishing Just and Reasonable Rates for Local Exchange Carriers | ) | WC Docket No. 07-135 |
| | ) | |
| High-Cost Universal Service Support | ) | WC Docket No. 05-337 |
| | ) | |
| Developing an Unified Intercarrier Compensation Regime | ) | CC Docket No. 01-92 |
| | ) | |
| Federal-State Joint Board on Universal Service | ) | CC Docket No. 96-45 |
| | ) | |
| Lifeline and Link-Up | ) | |
| | ) | WC Docket No. 03-109 |

# Comments of the Rural Broadband Alliance

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## SUMMARY

The Rural Broadband Alliance ("RBA") respectfully submits these comments in response to the "*Further Inquiry Into Certain Issues In The Universal Service-Intercarrier Compensation Transformation Proceeding*" ("*Further Inquiry*") issued by the Commission[1] in the above-referenced proceedings on August 3, 2011.

In these comments, the RBA provides specific policy and legal responses to the questions and issues set forth in the *Further Inquiry*.[2] In addition to these specific responses, the RBA summarizes below its concerns with the ABC Plan and the absolute legal requirements that must be incorporated into any reform of the Universal System in order to ensure the provision of specific, sustainable and predictable mechanisms to advance and preserve universal service in accordance with the mandate of the Communications Act of 1934, as amended (the "Act").

The RBA understands that the Joint Rural Associations have informed their member rural rate-of-return carriers that the framework supported by the Joint Letter will provide the rural carriers with cost recovery based on rate-of-return regulation and an uncapped fund. The RBA maintains that any order issued by the Commission will not be

[1] Our reference to the term "Commission" throughout these Comments and the attachment hereto refers to Commission's Bureaus directed by the Office of the Chairman of the Commission. We recognize that the concerns and issues we raise herein with regard to both the process and substantive issues reflected by the *Further Inquiry* do not reflect the final decisions or determinations of the Federal Communications Commission ("FCC") which, of course, can only be made by a majority vote of the Commissioners.

[2] The RBA's specific policy and legal responses are set forth in the Attachment to these comments. Within the Attachment, the RBA sets forth questions and issues as they appear in the *Further Inquiry* and a response to each question and issue with the exception of the final two questions in the *Further Inquiry* that address technical aspects associated with VoIP and call signaling.

sustainable unless it delivers on this promise. Any sustainable order must include rural rate-of-return carrier recovery of costs of existing expenses incurred to provide universal service, and clear, quantifiable, predictable, specific support mechanisms to ensure rural carriers of support sufficient to enable them to advance and preserve the provision of universal services available to rural consumers at "reasonably comparable" rates.

These comments also set forth a concern that the drawn-out inquiry into the much-needed reform of both the Universal Service mechanisms and the intercarrier compensation system is marred by a systemic prejudice against both rural rate-of-return carriers and rate-of-return regulation. The apparent disregard for the fact-based achievements of both rate-of-return regulation and rural carriers has resulted in an unsustainable "cart before the horse" approach to reform of USF mechanisms and intercarrier compensation.

The *Further Inquiry* begs the essential questions: how can the Commission propose to establish comprehensive reform to promote broadband deployment without first determining, consistent with statutory requirements:

1) What services and network capabilities will be included in an expanded definition of Universal Service;

2) What level of funding is necessary to provide specific and predictable mechanisms to preserve and advance a definition of universal service expanded to include broadband; and

3) What equitable and nondiscriminatory mechanisms should be utilized to provide for the funding of the specific, predictable, and

sufficient mechanisms established by the Commission to preserve and advance universal service?

The RBA comments conclude with recommendations for immediate actions the FCC should undertake to expedite the much-needed reform of USF and intercarrier compensation. We begin our comments, however, with focus on the importance of this proceeding to rural consumers, rural economic development, healthcare and education – the focal point that should drive every discussion of universal service in rural America.

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# Comments of the Rural Broadband Alliance

***"These are tough times for a lot of Americans – including those who live in our rural communities," said President Obama. "That's why my administration has put a special focus on helping rural families find jobs, grow their businesses, and regain a sense of economic security."***

White House Press Release, August 16, 2011

***"At the FCC, our primary focus is simple: the economy and jobs. We're focused on seizing the opportunities of communications technologies to catalyze private investment, foster job creation, compete globally, and create broad opportunity in the United States."***

FCC Chairman Genachowski, November 15, 2010

***"Action speaks louder than words but not nearly as often."***

Mark Twain

## I. Prologue:

## Don't Keep Rural America On Hold, But Don't Hang Up On Us, Either

### A. The Commission would better serve the public interest and the objectives of the Act by building on the success of rural rate-of-return carriers and rate-of-return regulation.

Rural telephone companies have been the engines of Rural America's emergence into the new era of opportunity provided by the development of broadband technology. Prior Commissions successfully fostered a policy that promoted the development of advanced networks and services made available to rural consumers residing in areas served by rural rate-of-return carriers. The FCC purposefully utilized the existing USF and access cost recovery mechanisms to provide rural rate-of return carriers with the cost recovery necessary to build and maintain evolving networks.

Until the imposition of a cap on the High Cost Loop (HCL) fund, the current Universal Service Fund succeeded fully in providing sufficient and predictable support to preserve and advance universal service in the rural areas served by rural rate-of-return carriers. As a result, rural telephone companies have been able to deploy networks that connect rural hospitals, remote schools, emergency service coordinators and providers, and increase nationwide connectivity to enhance the daily lives of rural Americans. In many instances, rural companies have built robust networks consistent with the technical recommendations developed by the RUS to ensure the development of infrastructure supportive of rural consumer and rural economic development objectives.

Rural telephone companies not only employ thousands across the country, but also provide the communications networks that support and drive rural economic development. The role of rural telephone companies in the social and economic advances

for Rural America should be recognized, supported, encouraged and utilized as a model with respect to how to make universal service work.

The positive service deployments in areas served by rural rate-of-return carriers are a stark contrast to the results in areas served by price-cap carriers where the FCC has utilized a different set of non-cost based rules and a challenged distribution model to allocate USF. The resulting so-called "rural-rural divide" does not justify the Commission's dismissive regard for rate-of-return regulation or the carriers subject to that regulation. To the contrary, the facts on the record support the need for the FCC to foster broadband universal service by modifying rate-of-return regulation to provide appropriate rate design and cost recovery mechanisms for all universal service providers of broadband service and an expanding definition of universal services.

**B. "Reasonably Comparable Services" cannot mean broadband connections in rural areas far below those available in urban areas. The *Further Inquiry* indicates that the Commission is considering moving backward.**

When the National Broadband Plan was first issued in March 2010, many rural providers responded with concern when they read that rural America would be relegated over the next 20 years to a broadband universal service speed of 1 Mbps up and 4 Mbps down. The RBA members were encouraged when Blair Levin, the Executive Director of the Omnibus Broadband Initiative that produced the NBP, wrote "the Federal Communications Commission (FCC) should review and reset the target for universal service support every four years."[3]

[3] "Universal Broadband – Targeting Investments To Deliver Broadband Services To All Americans," by Blair Levin, published by the Aspen Institute, 2010, p. 14. The RBA respectfully proposes that the review of the appropriate universal service broadband speed should be conducted and adjusted annually.

Nearly 18 months after the publication of the NBP, the *Further Inquiry* now reflects consideration of a reduction in the proposed universal service speed to 768 Kbps up. Neither the *Further Inquiry* nor the February 9, 2011 *NPRM*[4] in this proceeding reflect any consideration or fact-finding regarding the criteria set forth in the Act with respect to the determination of services included within the definition of "universal service."[5]

The RBA respectfully submits the entirety of the inquiry regarding reform of the USF to meet the consumer needs for universal broadband service must begin with a fact-based determination of how the definition of universal service should be modified to include broadband, conducted in a manner consistent with the requirements of the Act.[6]

This is not the first time that technological evolution has required a deliberate review of the mechanisms utilized to foster universal service. The evolution of the telecommunications network from analog to digital in the 1980s necessitated the need to establish new universal service mechanisms, and resulted in the creation of both the Universal Service Fund and access charges. The evolution to a broadband network requires revision of these mechanisms to better reflect the usage and value created by the growth of broadband.

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[4] *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 (2011) ("*NPRM*").

[5] *See*, 47 USC § 254(c)(1) and (2)

[6] *Id.*

Today's evolution of the broadband network results in both growing consumer needs for service and changes in the consumer's utilization of the network. As a result, there is a clear and imperative need to ensure that universal service mechanisms are structured in a manner that provides the required statutory result mandated by Section 254 of the Communications Act: a specific, sustainable and predictable mechanism that provides funding sufficient to ensure the provision of universal service to rural consumers at service levels and rates reasonably comparable to those available to urban consumers.

Speed matters, and it matters every bit as much in rural America as in our urban centers. Rural carriers have heard that some Commission staff members may suggest that a broadband speed that enables rural consumers to send e-mail and to perform basic web-based functions is sufficient for universal service. Any such assessment would ignore the plain and clear directive from Congress:

> Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.[7]

The significance of the Act's incorporation of this underlying critical policy becomes readily apparent when applied to universal broadband connectivity in rural areas. The level of universal service available in a rural community will not only drive potential economic development in the area, but will also determine the availability of educational and health care services enabled by high speed broadband.

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[7] 47 USC § 254(b)(3) (emphasis added).

The proposal set forth in the *Further Inquiry* that relegates the provision of universal broadband service in rural communities to a speed lower than that proposed in the NBP contradicts the explicit Universal Service principles set forth in the Act, and deprives rural consumers and their communities of the fundamental network platform that is essential in the 21st century to economic development and job creation.

### C. The Commission's failure to define what level of broadband service is included within the definition of "universal service" is chilling investment in rural infrastructure and related job creation.

The absence of certainty and clarity in the Commission's Universal Service policies has created a chilling effect on rural infrastructure investment, on the creation and maintenance of jobs in rural areas, and on rural economic development, healthcare and education.[8] The issuance of the *Further Inquiry* has further exacerbated the substantive and procedural concerns first raised with the issuance of NBP in March 2010.

Until the issuance of the NBP, rural incumbent rate-of-return carriers had every reason to rely on their understanding that their deployment of network to support advanced services was absolutely consistent with FCC policy.[9] The NBP, however, proposed to end the fundamental rate-of-return regulatory framework upon which rural

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[8] The concern is not new. Nor is it raised here on the record of these proceedings for the first time in these comments. *See, e.g.,* Letter from the Rural Broadband Alliance to Marlene H. Dortch, December 15, 2010 ("An unintended and ironic consequence of the Commission's ongoing consideration of changes in the universal service and intercarrier compensation mechanisms is the fact that it has resulted in rural industry uncertainty which is impacting infrastructure investment and job creation - the very goals upon which Chairman Genachowski is focused".)

[9] *See, infra,* Sec. III. A.

carriers have relied to provide them with an opportunity to recover the costs of their provision of universal service including a reasonable return on their investments.

As a result, many rural carriers became concerned not only with whether they could recover the costs of new infrastructure investments they contemplated, but whether the Commission would attempt to deprive them of cost recovery for the expenses they had already incurred in the provision of universal services in reliance on the FCC's established rules and policies.

These concerns were aggravated further when the NBP was followed first by an April 21, 2010, Notice of Inquiry and Notice of Proposed Rulemaking and subsequently by the proposals set forth in the *NPRM* in February 2011 and now by the new proposals set forth in conjunction with the *Further Inquiry*. In addition, many rural companies report that Commission staff members, in meetings or at public forums, have unofficially questioned the prudency of robust network deployment in rural areas.

The past 18 months has not produced any change in the FCC policy or rules, and the Commission has not provided any official guidance to rural rate-of-return carriers regarding any limitations on what level of broadband service qualifies for funding. As a result of the continuing and growing uncertainty, rural providers across the country are contemplating financial pressures imposed by anticipated Commission policies that will require job downsizing instead of job growth. Many rural companies have placed on hold plans for broadband network infrastructure investment intended to create a platform in rural communities to stimulate job creation and economic development.

Several rural companies sought and obtained awards of federal broadband stimulus funding in order to advance economic development in their communities. In some instances, however, companies have decided not to accept the broadband stimulus funding, citing the uncertainty caused by the Commission's proposals and deliberations.

The President has called for action that helps "rural families find jobs and regain a sense of economic security." In contrast, the process that surrounds these proceedings both on the record and "off the record"[10] has resulted in growing concerns for survivability - much less growth - within an industry of hundreds of rural companies that have demonstrated a commitment to bring advanced networks and telecommunications services to their rural communities in accordance with established government policy, rules and regulations.

In comments filed by the RBA on April 18, 2011, in response to the *NPRM*, we stated: "It is vital to rural America that the Commission expediently resolves the long-pending issues raised in this proceeding, and it is essential to rural economic development, job creation, and job preservation that the Commission gets it right." We recognize and appreciate the fact that the filing of the ABC Plan on July 29, 2011, followed quickly by the issuance of the *Further Inquiry* on August 3, 2011 incorporating a fast comment cycle may be intended by the Commission to reflect an intent to act swiftly. As discussed both above and below and in detailed specific response to the

[10] As noted in the August 5, 2011, Letter from James Bradford Ramsay (on behalf of the State Members of the Joint Board on Universal Service) to Marlene H. Dortch: "The industry has been briefing the FCC for literally months on the discussions that led to the filing of the ABC proposal. However, though apparently, quite a bit of detail of the proposals was relayed to FCC representatives, absolutely no detail was included in any of the *ex parte* notices."

questions and issues raised in the *Further Inquiry,* the RBA is concerned that many of the proposals under consideration constitute backward steps away from the universal service objectives of the Act. As important as swift action may be, it is more important that the Commission gets this right, and ensures that the actions it undertakes are consistent with both the words and the underlying policy incorporated in the Act.

## II. The Fundamental Objectives Of Rural Rate-Of-Return Carriers Are Consistent With Requirements Of The Act And Existing Rules And Policy.

The RBA has set forth these two primary objectives for rural providers of universal service:

> 1. Cost recovery of established investment and operational expenses incurred in providing universal service; and
>
> 2. Establishment of universal service mechanisms that are sufficient to ensure a reasonable opportunity for a provider of universal broadband service to recover needed additional investment and operational expenses necessary to provide an expanding definition of universal service including broadband connectivity.

Each of these fundamental objectives is consistent with the Act and established FCC rules and regulations. Rural carriers, including rural incumbent rate-of return carriers and their affiliate rural CLECs and rural wireless providers, have incurred expenses, including significant network investment, in reliance on the FCC's established rules and regulations.

With respect to rural rate-of-return regulated incumbent carriers, these providers have relied on both the FCC's established rate-of-return regulation and its universal service funding rules to provide assurance of a reasonable opportunity to recover costs

and a reasonable return. Rural CLECs[11] and rural wireless ETCs have similarly made significant expense commitments to expand universal service in rural areas in reliance of their understanding that, pursuant to the Act, they would be provided "sufficient and predictable" support. Accordingly, any order issued by the FCC in these proceedings must provide carriers with the opportunity to recover the costs of the expenses they have already incurred in providing universal service.[12]

As important as the recovery of existing expenses incurred to provide universal service is to rural carriers, it is equally important that the Commission provide clarity with regard to the future availability of funding to provide an expanding definition of universals service that will require additional investment and expenses to deploy and maintain. No prudent business undertakes expenses to provide a service or produce a product in the absence of a reasonable expectation that the business will be able to recover the costs of the undertaking and earn a reasonable return on the required capital. The very nature of the provision of universal service in high cost to serve areas, where the provider limits service charges to "reasonably comparable rates," necessitates reliance on support from the USF.

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[11] Rural CLECs have also relied on the Commission's rural CLEC access rules to recover a rational portion of their costs. In the event that the Commission requires rural CLECs to reduce their existing access charge rates, these carriers should be provided with an opportunity to recover the revenues they had anticipated from access service in reliance on the established FCC rules and policy when they decided to incur expenses to expand services in rural areas. *See*, Comments of the Rural Independent Competitive Alliance ("RICA"), April 18, 2011.

[12] The RBA has throughout this proceeding elaborated further in comments and in *ex parte* letters on the fundamental and critical importance of providing rural carriers with an opportunity to recover established expenses and additional commitments associated with RUS funding and the broadband stimulus program. *See, e.g.,* Comments of the Rural Broadband Alliance, April 18, 2011, pp. 18-22.

This is the very reason the Congress directed the Commission to "base policies for the preservation and advancement of universals service" on a set of principles that included the requirement that the Commission establish and maintain "specific and predictable support mechanisms."[13] Accordingly, any order issued by the FCC in these proceedings must provide universal service providers in rural high cost areas with the funding sufficient to recover the costs of providing universal service at reasonably comparable rates.

Moreover, the mechanism must be "predictable" and, in this regard, the RBA respectfully submits that words alone labeling a mechanism as "sufficient and predictable" will not pass scrutiny. The Act also requires that support mechanism to advance and preserve universal service "should be specific."[14] We respectfully urge that with the adoption of any reform of its USF distribution rules, the Commission should provide a clear quantitative illustration that supports and sustains a finding that the new rules are consistent with the statutory "specific, predictable and sufficient" requirement.[15]

**A. An Order implementing the framework set forth in the Joint Letter and the ABC Plan must demonstrate with specificity that it provides rural rate-of-return carriers with cost recovery of existing expenses and mechanisms that are sufficient and predictable to provide recovery of additional expenses required to provide universal service.**

[13] 47 USC §254(b)(5).
[14] *Id.*
[15] In this regard, and at the request of Commission Staff, the RBA would be pleased to work with the Commission to provide additional specific input regarding quantification of the impact of proposed rules on the operations of rural universal service providers.

In the *Further Inquiry*, the Commission seeks comment on how the "RLEC Plan" (submitted by the Joint Rural Associations on April 18, 2011 and modified by the "Joint Letter" filed on July 29, 2011) and the "America's Broadband Connectivity Plan" filed by six Price Cap Companies ("ABC Plan") "comport with the Commission's articulated objectives and statutory requirements."[16]

While we are appreciative of the efforts of diverse LEC industry participants to build a framework for reform with both the RLEC Plan for incumbent rural companies and the ABC Plan for non-rural rate of return service areas, we have several concerns with the ABC Plan and how it may impact the RLEC Plan and the operations of both the incumbent operations of rural carriers and their affiliated rural wireless and rural CLEC operations.

Irrespective of our concerns, the Joint Rural Associations have essentially assured their members that the consensus framework addresses the fundamental objectives that the RBA has set forth above. More specifically, the Joint Rural Associations informed their members that, in addition to many other reported attributes, the consensus framework filed with the FCC will:

1. "maintain rate-of-return cost recovery;"[17] and

2. "enable reasonable, measured growth in funding over time that is not subject to a cap."[18]

The RBA fully appreciates the efforts of the Joint Rural Associations to achieve these objectives and we have no doubt that the Joint Rural Associations believe that the

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[16] *Further Inquiry*, pp. 1-2.
[17] E-Mail Letter of July 29, 2011 from the Joint Rural Associations to their members (including RBA Members).
[18] *Id.*

consensus framework will be implemented in a manner consistent with their representations to their members. We are concerned, however, that the math may not work.

The Joint Rural Associations believe that the proposed budgeted $ 2 billion for USF, plus a possible addition of $ 50 million a year for rural rate-of-return carriers, growing to $ 300 million in the sixth year, will be sufficient for rural rate of return carriers to recover their established lawful investments and expenses, maintaining rate-of return regulation (with the return adjusted to 10% as part of the compromise), recover revenues that are currently recovered from access charges, and support additional investments including the "middle mile" costs.

We hope they are correct. Rural carriers, however, cannot operate companies and provide universal service on the basis of hope. Irrespective of any "budget" figures for USF set forth in the Joint Letter, no rural rate-of return carrier has waived its right under existing law to recovery of its established expenses incurred in the provision of universal service. Nor has any rural provider of universal service waived its right to specific, sufficient and predictable support mechanisms.

Accordingly, and as set forth above, in any order adopting new USF rules, including an order that adopts the framework set forth in the Joint Letter, the FCC must provide universal service providers in rural high cost areas with specific, sufficient, and predictable funding to recover the costs of providing universal service at reasonably comparable rates. Moreover, as set forth above, the Commission should provide a clear

quantitative illustration that supports and sustains a finding that the new rules are consistent with the statutory "specific, predictable and sufficient" requirement.[19]

### B. The ABC Plan raises statutory and policy concerns.

The RBA fully appreciates the difficult task undertaken by all the parties to the Joint Letter in their collective efforts to arrive at a consensus framework. We are also sensitive to the fragile nature of a consensus and fully understand the intent of the parties in presenting the consensus as a whole to be kept intact.[20] While parties to the Joint Letter are likely to complain that their framework would have been adopted by the FCC "whole cloth" if no one had raised concerns with the ABC Plan, the fact is that press reports indicate that FCC Deputy Bureau Chief Carol Mattey, speaking at a meeting of OPASTCO in Minneapolis on July 27, 2011, stated flatly, "The FCC is interested in an industry plan. But it wouldn't rubber-stamp just anything."[21]

The RBA concerns with the ABC Plan are set out in detail in the Attachment to these comments that sets forth responses to the issues raised by the Commission in the *Further Inquiry*. We highlight and summarize several of these concerns below:

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[19] *See*, n. 14, *infra*.

[20] Although the Joint Rural Associations did not endorse the ABC Plan, at least one of the rural groups expressed to the FCC "the importance of keeping the parameters of the reform framework of the proposed "America's Broadband Connectivity Plan" in place and explained that any changes will make it difficult to achieve industry consensus." Letter from Jill Canfield, Director Legal and Regulatory, NTCA, to Marlene H. Dortch, August 9, 2011.

[21] "Carrier Agreement May Speed USF Reform," Carol Wilson, Chief Editor, Events, Light Reading http://www.lightreading.com/document.asp?doc_id=210630

**1. If the USF is constrained to a $ 4.5 billion maximum, the FCC should make that determination on the basis of fact and law.**

The ABC Plan assumes that the USF is constrained as suggested by the *NPRM*.[22] We respectfully submit that the size of the fund required to meet the statutory requirements of the Act should be determined by the FCC on the basis of fact and applicable law. The fact that a group of carriers has utilized the proposed $ 4.5 billion "budget" in the formulation of a consensus proposal does not provide the Commission with a basis to constrain the fund in the absence of specific findings consistent with the Commission's obligations under the Act. It is not sufficient for the Commission to claim that it has discretion to constrain the size of the USF on the basis that a group of providers suggest that a $ 4.5 billion fund is "sufficient."

**2. There is no basis to limit the distribution of $ 2.2 billion to areas where price cap carriers serve as incumbents.**

The RBA understands that the ABC Plan proposed to divide a constrained USF for high cost support in the following manner: $ 2 billion for rural rate-of-return carriers; $2.2 billion for areas served by price cap carriers; and $ 300 million for a mobile and satellite service fund. In addition to the issues regarding sufficiency (including sufficiency for rural wireless ETCs), there is no basis to dedicate $ 2.2 billion to support networks only for unserved and underserved consumers in areas served by price cap carriers. The $ 2 billion budget for rural rate-of-return carriers approximates the amount distributed to rate-of-return carriers currently to provide recovery of existing expenses and, accordingly, does not included funding that would be necessary to extend service to unserved and underserved consumers residing in areas served by rate-of-return carriers.

[22] *NPRM,* para. 79.

The RBA understands that nearly 20% of the rural consumers identified by the Commission reside in the service areas of rural rate-of-return carriers. It is inequitable to these consumers to disregard them and to direct $2.2 billion intended for unserved and underserved consumers only to those residing in areas served by price cap carriers.

**3. There is no basis to establish a universal broadband speed level at 768 Kbps up and 4 Mbps down.**

The FCC in conjunction with the Joint Board is responsible for determining alterations and modifications to the definition of universal service.[23] Although the ABC Plan assumes the definition of broadband for universal service funding purposes to be 768 Kbps up and 4 Mbps down, the utilization of this definition of universal service in the ABC Plan does not constitute a sustainable basis for the Commission to adopt the proposed standard in the absence of a fact-based finding reached in a manner consistent with statutory requirements.[24]

**4. The ABC Plan relegates rural consumers residing in the highest cost to serve rural areas to services that are not "reasonably comparable" to services available in urban areas.**

The ABC Plan leaves over 730,000 rural consumers residing in the highest cost to serve areas of the nation relegated to a reduced level of service through satellite.[25] The RBA respectfully submits that this result is the very opposite of the intent of the Universal Service provisions of the Act which seeks to ensure reasonably comparable

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[23] 47 USC § 254(c)(2).
[24] 47 USC § 254(c) (1) and (2). RBA has previously set forth its policy concerns regarding the utilization of the lower speed proposed in the ABC Plan. *Supra,* Sec. I.B. pp. 5-8.
[25] *See,* ABC Plan, Attachment 1, "Framework of the Proposal," p. 5.

services and rates to consumers residing in high cost areas - the very mission that the rural companies have undertaken not only through their incumbent operations, but also their rural CLEC and rural wireless operations.

The incorporation of the proposal to relegate the highest cost to serve rural consumers to a lesser grade of service does not provide the Commission with a factual or lawful basis to consign these consumers to less than the Act requires. The RBA recognizes that a similar proposal was set forth in both the NBP and the *NPRM*.[26] The RBA respectfully submits that the adoption of any such proposal is unsustainable. In any event, the recommendation of a group of carriers cannot provide a rational basis to avoid the plain words and intent of the Act.

**5. The provision of a "right of refusal" by the price cap carriers constitutes unlawful preemption of the authority delegated to state commissions and is contrary to the public interest.[27]**

The ABC Plan provides for the targeting of USF to areas served by price cap carrier incumbents, and gives the price cap carrier a "right of refusal" to receive the funding. The RBA concern is with the "right of refusal" for price cap carriers. There is no doubt that there should be appropriate levels of funding available to provide universal service to all rural consumers.

In contrast to the statutory language regarding the designation of ETCs in the areas served by rural telephone companies, there is no lawful basis to provide the price

[26] *See, e.g., NPRM* at para. 424.
[27] More detailed discussion of this issue is set forth in the Attachment in response to related issues raised in the *Further Inquiry.*

cap carriers with a "right of refusal."[28] Moreover, the price cap carriers elected price cap regulation that enabled them to reap financial benefits (the very reason for "incentive" regulation), but did not encourage the investment in rural areas that rural rate-of-return carriers have made. There is no policy or legal basis to give the price cap carriers a "right of refusal" to future funding. Doing so will threaten the viability of established and committed rural CLEC and rural wireless operations.

The automatic "right of refusal" goes to the heart of the authority of the state commissions preserved under the Act. It is the state commissions, and not the FCC, that designate ETCs.[29] While the FCC may choose to determine that "specific, sufficient and predictable" universal service funding requires the support of the network of only one fixed and one mobile provider in any given area, it should be left to the state commission, who is closest to the consumer, to determine which ETC will be the funding recipient.

In many instances, the state commission may determine that another carrier, including a rural rate-of-return carrier that serves nearby communities, may be better suited to bring advanced services to an unserved or underserved area where a price cap company has served as the incumbent. There should be no free pass given to the price cap incumbent. The state Commission, consistent with the intent of the Act, should be left with the authority to make this designation.

[28] 47 USC § 214(e)(2).
[29] *Id.*

### 6. Rural Rate-of-Return Carriers Must Be Given An Opportunity To Recover Costs Fully When Access Charges Are Reduced [30]

The RBA is concerned that the ABC Plan for access charge and intercarrier compensation reform will not provide rural incumbents and rural CLECs with sufficient funding to recover their costs. Both rural incumbents and rural CLECs have relied on established FCC rules to recover a significant portion of their costs from access charges. The stability of these companies will be threatened if the FCC provides a windfall to long distance companies in the form or reduced access charges without ensuring that these rural carriers are provided with revenue cost recovery to offset the losses resulting from reduced rates.

The concerns regarding cost recovery are aggravated further by the proposed preemption of state commission authority over intrastate access charges. As set forth in the Attachment providing responses to specific issues related to the proposed state preemption, the RBA identifies alternative frameworks, established through the statutory Joint Board process, to achieve rational universal service objectives without preemption of the states. As discussed more fully in the Attachment, the FCC should not overlook the statutorily required Joint Board processes that jurisdictionally separate network costs used to provide both interstate and intrastate services.

RBA is also concerned with the ABC Plan's proposed treatment of IP interconnection that suggests, in a footnote, that IP to IP interconnection should be governed exclusively by commercial contracts. The RBA respectfully submits that the terms and conditions governing IP interconnection to a high cost universal service

[30] More detailed discussion of this issue is set forth in Section IV *infra* and in the Attachment in response to related issues raised in the *Further Inquiry.*

network should be addressed within the framework of a Notice of Inquiry and potential subsequent rulemaking proceedings.

As noted above, more detailed responses addressing statutory and policy concerns with the ABC Plan are set forth in the Attachment in the specific responses to the issues raised by the Commission in the *Further Inquiry*.

## III. The Process Of Reforming USF and Intercarrier Compensation Is Impeded By The Appearance Of A Systemic Unjustified Prejudice Against Rate-Of-Return Regulation And Rate-Of-Return Carriers.

The FCC has established three different sets of rules and regulations to distribute USF high cost support to three different groups of universal service providers: 1) cost-based support for rural rate-of-return carriers;[31] 2) interstate access support (IAS) and high cost model support (HCMS) for price cap carriers;[32] and 3) identical support for competitive ETCs. Of these three distinct sets of distribution mechanisms, only the cost-based rules established for to rate-of-return carriers are sustainable.[33]

The FCC has recognized the deficiencies and adverse consequences of the identical support rule for many years, and the Commission has proposed to discard the

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[31] The support mechanisms include the high cost loop support (HCLS), interstate common line support (ICLS), and Local Switching Support (LSS) Although the FCC rules establishing support mechanisms for rural rate-of-return carriers were initially based on the actual costs of providing universal service, the "sufficiency" and "predictability" of the support mechanisms for rural rate-of-return carriers was diminished by the imposition of a cap on the high cost loop fund.

[32] Several price cap carriers participate to an extent in the rate-of-return carrier mechanisms as a result of waivers related to their conversion of from rate-of-return regulation.

[33] As a result of the imposition of the HCLS cap, however, these rules are exposed to challenge regarding whether the cap renders the funding mechanism insufficient, unpredictable and non-specific.

long discredited funding mechanism.[34] The IAS and HCMS rules applicable to price cap carriers are under challenge in an Appellate Court proceeding commonly referred to as the 10th Circuit remand, to which the Commission has failed to respond successfully.[35]

The unresolved issues of the 10th Circuit remand focus on the Commission's failure to define with precision the very terms upon which the Act expects sustainable and predictable funding mechanisms to be based: "sufficient" and "reasonably comparable."[36] This fundamental failure to determine what constitutes "reasonably comparable" universal services and rates and what funding is "sufficient" to advance and preserve universal service is closely related to what appears to be the Commission's systemic disdain (both on the record and off the record) for rate-of-return regulation and rural carriers subject to rate-of-return.

Both the official record and meetings with the Commission evidence the creation of a superficial caricature of rural companies and rate-of-return regulation at the Commission. This caricature is forged on a baseless assumption that rural rate-of-return carriers make unwarranted investments in network and incur operational expenses without limitations because rate-of-return regulation provides them with automatic recovery without regard to the prudency of their investments and expenses.

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[34] *See, NPRM* at para. 243.

[35] *See, Qwest Communications Int'l, Inc. v. FCC*, 398 F.3d 1222 at p. 1223 (10th Cir. 2005).

[36] "In *Qwest I,* we remanded the Ninth Order with instructions that the FCC more precisely define the terms "sufficient" and "reasonably comparable," "in a way that can be reasonably related to the statutory principles." 258 F.3d at 1202. For the reasons discussed below, we hold that the FCC has failed to reasonably define these terms." *Qwest Communications Int'l, Inc. v. FCC*, 398 F.3d 1222 at p. 1223 (10th Cir. 2005)

"On the record" evidence of this caricature is found in both the NBP and the *NPRM*. As is most often the case with prejudicial cartoons, the facts belie the caricature and the assertions upon which the caricature is based.

The NBP calls for the end of rate-of-return regulation, stating:

> [T]he FCC should require rate-of-return carriers to move to incentive regulation. . . Rate-of-return regulation was not designed to promote efficiency or innovation; indeed, when the FCC adopted price cap regulation in 1990, it recognized that "rate of return does not provide sufficient incentives for broad innovations in the way firms do business." (footnote omitted).[37]

Contrary to the assertion set forth in the quote from the NBP, the facts demonstrate that it is rural areas served by rate-of-return regulated carriers where "broad innovations" in telecommunications networks have been deployed, and not in the areas served by price cap carriers. The simple fact is that rural high cost-to-serve areas do not have the demographic conditions to support a robust market. Ironically, if the market conditions in a high cost to serve rural area were more robust, there would be no need for universal service support. Rate-of-return regulation provides both the regulator and the consumer with the tools necessary to ensure that, in the absence of robust competitive market conditions, "reasonably comparable services" are offered at "reasonably comparable prices."

Cost-based rate-of-return regulation also affords the Commission the opportunity to ensure that USF is "sufficient," and not excessive, by directly tying the funding determination to the actual costs of providing universal service. The RBA suggests that

[37] NBP, p. 147.

the systemic acceptance of the false caricature of rural rate-of-return carriers has led the Commission to disregard this tool.

The *NPRM* is revealing in this regard. The Commission recognizes that "[r]ate-of-return carriers, on the whole, have made significant progress in extending high speed Internet access service in their territories, in part due to the operation of the Commission's 'no barriers to advanced services' policy."[38]

On the one hand, the Commission (in contrast to the NBP) recognizes that rural rate-of-return carriers have deployed modern telecommunications networks in accordance with existing Commission policy. In the next breath, however, the Commission invokes the caricature to suggest that there is something wrong with rural companies achieving the objective of advanced network deployment:

> At the same time, our current high-cost universal service rules – combined with potential lack of clarity regarding what costs should be reimbursable for universal service purposes – may have the unintended effect of providing some carriers more support than is necessary to ensure reasonably comparable local voice service at reasonably comparable rates (footnote omitted). Moreover, our current "no barriers to advanced services" policy imposes no practical limits on the type or extent of network upgrades, so long as such networks continue to provide access to voice service. As such, incumbent companies are free to use high-cost support to deploy broadband networks to areas where there is an unsubsidized competitor, such as a cable company, as well as to areas where satellite service would be a significantly less expensive option. Companies also are free to accelerate network upgrades even where a more measured approach to capital investment might be appropriate, given the demographics of the customer base and rate of consumer

[38] *NPRM* at para. 170 citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244 (2001) ("*Rural Task Force Order*").

> adoption for new services. Absent any limits, the rate-of-return regulatory framework provides universal service support to both a well-run company operating as efficiently as possible given the geography and demography of its service area, and a company with high costs due to or exacerbated by imprudent investment decisions, bloated corporate overhead, or an inefficient operating structure.[39]

This quote reflects the systemic prejudice – the suggestion that rate-of-return regulation renders the Commission helpless to establish limits on "imprudent investment decisions, bloated corporate overhead, or an inefficient operating structure." More significantly, the quote reveals the Commission's disregard for the single sustainable regulatory tool presently available to ensure that universals service funding is "sufficient," and not excessive, to support the provision of "reasonably comparable" services at "reasonably comparable rates" – cost based rate-of return regulation.

Contrary to the implied suggestion that rate-of-return regulation renders the Commission helpless, resulting in unbridled "imprudent investment" and "bloated" overheads and structures, rate-of-return regulation provides the Commission with the precise tools it requires to precisely respond to the 10th Circuit remand and "precisely define the terms 'sufficient' and 'reasonably comparable,' in a way that can be reasonably related to the statutory principles."[40]

The Commission is well aware of these tools. Rate-of-return carriers are required to report their costs subject to Parts 32, 36 and 64 of the Commission's Rules and Regulations. Their accounting of their costs is subject to Commission scrutiny and audit. The determination of whether an investment or expense incurred by a rate-of-return

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[39] *NPRM,* para. 171 (emphasis added).
[40] *Qwest Communications Int'l, Inc. v. FCC*, 398 F.3d 1222 at p. 1223 (10th Cir. 2005)(emphasis added).

carrier is "imprudent" or "bloated" is not left to the carrier. The ultimate determination is subject the Commission's exercise of existing authority.[41]

Nonetheless, the Commission, as indicated in the *NPRM*, perpetuates a baseless prejudicial caricature which, in turn, drives the Commission away from the consideration of utilizing actual cost-based methodologies to determine what constitutes "sufficient" funding. The Commission's predisposition has led it to suggest that "sufficient" funding should be based on models predicting forward-looking costs to provide universal service, and not on the actual or embedded costs of providing service. The Commission repeatedly fails to recognize that "forward-looking costs" become "embedded" once a carrier has incurred the costs to provide universal service. In the absence of a reasonable opportunity to recover the costs of providing universal service based on "sufficient" funding, it is impossible to advance and preserve universal service.

The Commission has yet to demonstrate the viability of utilizing a model to provide "sufficient" funding. The RBA respectfully suggests that the public interest will be well served by the Commission setting aside its misplaced prejudice toward rate-of-return. In taking this route, the Commission can utilize the sustainable tools rate-of-return regulation affords it to ensure that its USF mechanisms are "specific, sufficient and predictable" unless and until the Commission establishes a sustainable model. The

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[41] *See, e.g.*, In the Matter of Sandwich Isles Communications, Inc. Petition for Declaratory Ruling, WC Docket No. 09-133, released September 29, 2010, discussion of "Used and Useful Analysis" at para. 11-16. The RBA also notes that the Commission has reportedly expended over $ 20 million in recent years conducting audits of rural rate-of-return regulation. There is no indication on the record of any audit findings of systemic "imprudent investment" or "bloated expenses" to support the systemic prejudicial caricature attached to rate-of-return regulation and rural carriers.

Commission's well-placed concerns regarding its stewardship of the USF demand the accountability that is readily available in the Commission's administration of USF under the rules applicable to rate-of-return carriers – accountability that is completely absent in the current rules applicable to price cap carriers and CETCs.[42]

## IV. The Process Of Reforming USF and Intercarrier Compensation Is Impeded By "Cart Before The Horse" Proposed Resolution Of Critical Issues

Over the past three weeks subsequent to the issuance of the August 3, 2011, *Further Inquiry*, the RBA and undoubtedly numerous interested parties have redeployed resources to review the ABC Plan filed on July 29, 2011, and to respond to the myriad of issues set forth in the *Further Inquiry*. Immersed in this atypical and unusual process,[43] it is all too easy to lose sight of basic, fundamental, but unresolved issues.

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[42] The RBA does not object to the continued endeavor by the Commission to develop a sustainable model for purposes of determining sufficient USF distribution. *See*, RBA Comments, April 18, 2011, pp. 16-17: "In lieu of a demonstration of company-specific costs, the established benchmark could be utilized to provide surrogate support for the need for an increase in funding to provide interstate cost recovery. The Commission and all parties should recognize, however, that a rural RoR carrier must retain the opportunity to obtain support based on its actual costs. No model could ever sufficiently predict in every instance and circumstance the costs of providing universal service under any and all circumstances. Accordingly, there should always be a safety valve process based on actual costs, as described above, available to address any instance where the model and resulting benchmarks are not adequate to ensure the provision of universal service."

[43] With respect to the "unusual' nature of the process, we reiterate: As noted in the August 5, 2011, Letter from James Bradford Ramsay (on behalf of the State Members of the Joint Board on Universal Service) to Marlene H. Dortch: "The industry has been briefing the FCC for literally months on the discussions that led to the filing of the ABC proposal. However, though apparently, quite a bit of detail of the proposals was relayed to FCC representatives, absolutely no detail was included in any of the *ex parte* notices."

In the *NPRM* issued on February 9, 2011, the full FCC adopted a process that provided for "a path of reform."[44] The path provided for "near-term" actions and "long-term" considerations. The process set forth in the *NPRM* suggested that the FCC would first act on specific issues set out for separate comment.[45] The process endorsed by the full FCC made sense. The *Further Inquiry* issued by the Commission (i.e., the Bureaus under the direction of the Chairman's office) appears to take a different course.

The RBA is concerned that the new course bypasses critical issues that must be addressed sequentially in order to arrive at a sustainable set of reforms of both USF and intercarrier compensation. While the RBA shares the objective of the proponents of the Joint Letter and the ABC Plan to move forward with solutions as comprehensive as possible, we are concerned that an unsustainable decision will create further uncertainty instead of restoring much needed regulatory stability to rural carrier operations. We would fully welcome a sustainable FCC order in this proceeding that provides rural rate-of-return carriers with full cost recovery on a rate-of-return regulation basis and an uncapped fund. The Joint Rural Associations have reported to their members that adoption of the framework set forth in the Joint Letter will produce that very result. We hope they are right and, accordingly, we are concerned with ensuring that any order issued in this proceeding clearly delivers on that promise. The RBA respectfully submits that anything less is not sustainable.

We are admittedly concerned, as set forth both in Section II *supra* and in our responses to the *Further Inquiry*, that the Commission, in its fervor to take much-needed

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[44] *NPRM* at para. 75 *et seq.*

[45] *NPRM* at para. 603 *et seq.* These issues include that applicability of access to VoIP, phantom traffic and signaling rules, and access stimulation.

action in these proceedings, does not issue an unsustainable order that creates more instability or move backward. The apparent assumption in the ABC Plan of the adoption of a universal broadband access speed of 768 Kbps up and 4 Mbps down readily illustrates our concern in this respect.

The RBA and other parties have invested time and effort at the behest of the *Further Inquiry* to analyze and comment on a proposal predicated on a definition of universal service that the FCC has not adopted.[46] As with so many of the issues raised by the *Further Inquiry*, and as noted throughout our responses to specific issues set forth in the Attachment, the cart appears to be well ahead of the horse. We summarize below several additional issues that require resolution in order to ensure that the FCC can reach a sustainable determination in these proceedings.

**1. Determination of "sufficient" funding and other universal service definition considerations.**

Until the FCC establishes how the definition of universal service will be redefined in accordance with Section 254(c)(1) and (2) of the Act, how can the Commission suggest what will constitute "reasonably comparable" services and rates? And, absent a determination of what constitutes "reasonably comparable" services and rates, how can the Commission suggest what level of funding will be "sufficient?"

These are not questions developed by the RBA. These are the issues raised by the 10th Circuit remand.[47]

The Commission was scheduled to respond to the remand by April 16, 2010.

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[46] The proposal is also predicated on a cost model that is not readily available for review.

[47] *Qwest Communications Int'l, Inc. v. FCC*, 398 F.3d 1222 at p. 1223 (10th Cir. 2005)

On December 15, 2009, the Commission indicated that it could not meet the schedule, noting that it was scheduled to provide Congress the NBP by February 17, 2010:

> We anticipate that changes to universal service policies are likely to be recommended as part of that plan, and that the Commission will undertake comprehensive universal service reform when it implements those recommendations. It will not be feasible for the Commission to consider, evaluate, and implement these universal service recommendations between February 17, 2010, and April 16, 2010, the date by which the Commission committed to respond to the Tenth Circuit's remand. We tentatively conclude, therefore, that the Commission should not attempt wholesale reform of the non-rural high-cost mechanism at this time, but we seek comment on certain interim changes to address the court's concerns and changes in the marketplace.[48]

As indicated in the Commission's statement above, the Commission set forth on December 15, 2009 proposed interim changes, but it has taken no action on those proposals. The proposed interim changes included thoughtful concerns regarding the fundamental issue of how universal service should be defined separate and apart from the addition of broadband service.

In connection with its continuing consideration of universal service high-cost network support and its consideration of the remand resulting from the decision of the United States Court of Appeals for the Tenth Circuit in *Qwest Communications International, Inc. v. FCC*, the Commission stated:

> Given the changes in consumer buying patterns, the competitive marketplace, and the variety of pricing plans offered by carriers today, stand-alone local telephone rates may no longer be the most relevant

[48] *In the Matter of High-Cost Universal Service Support*, WC Docket No. 05-337, and In *the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, **Further Notice of proposed Rulemaking,** released **December** 15, 2009, para. 1.

> measure of whether rural and urban consumers have access to reasonably comparable telecommunications services at reasonably comparable rates.[49]

The Commission further observed:

> Although only local telephone service is supported by the high-cost universal service mechanism at this time, section 254(b)(3) of the Act provides that consumers in all regions of the nation should have access to telecommunications and information services, *including advanced services and interexchange services*, at reasonably comparable rural and urban rates. (Footnote omitted). In light of the fact that most consumers subscribe to both local and long distance services from the same provider, would it be more consistent with the statute, and the Commission's obligation to advance universal service, (footnote omitted) to define reasonably comparable rates for purposes of the non-rural mechanism in terms of combined local and long distance rates?[50]

The RBA respectfully urges the Commission to act on the identified need to redefine the services and network functionalities, including broadband capability, supported by the high-cost mechanism. By moving expediently to redefine the level of telecommunications services and network functionalities included in the definition of universal service in a manner consistent with the Commission's duties pursuant to §254(c)(1) of the Act, the Commission will set the necessary foundation to move forward with the consideration and resolution of needed changes to the Universal Service Fund mechanisms.

Moreover, by acting on the needed redefinition of universal service and committing to continual review and revision of that definition, the Commission will move the process forward expediently by making certain the horse is in front of the cart.

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[49] *In the Matter of High-Cost Universal Service Support*, WC Docket No. 05-337, and In *the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, **Further Notice of proposed Rulemaking,** released **December** 15, 2009, para. 15.
[50] *Id*., at para. 18.

A precise redefinition of universal service will alleviate uncertainty with respect to the level of network services and functionalities that may be subject to universal service support. A clear definition of universal service that recognizes both technological evolution and the changes in consumer expectations will not only remove the recently created uncertainty, but will also provide an important measure of accountability with respect to the use of USF and assist the Commission in ensuring that the support mechanisms it establishes in this proceeding are specific, sufficient, and predictable.

**2. Reform of the USF contribution mechanism and proper sizing of the fund.**

Another critical "cart" placed before the "horse" is the assumption throughout the *NPRM* and the *Further Inquiry* that the USF must be budgeted at $ 4.5 billion. Irrespective of any individual or personal views or perspectives at the Commission, Section 254 does not suggest that the Commission fulfill its universal service obligations under the Act by first establishing a "budget." The Act clearly anticipates that the FCC, with the recommendation of the Joint Board, will first determine what constitutes universal service and reasonably comparable rates for reasonably comparable universal services. With that fundamental information as a basis, the Act provides that the Commission should establish "specific, sufficient and predictable" funding mechanisms to advance and preserve universal service. On this basis, the Commission can sustain a determination of the funding level that will be sufficient and establish equitable mechanisms to obtain contributions to the USF.

The *Further Inquiry* turns this process around, without basis in statute or policy, and assumes a limited budget with no consideration of contribution mechanisms. The RBA is not alone in identifying the fundamental need to consider reform of the

contribution mechanism to ensure an equitable system that will provide the funding necessary to fund a definition of universal service that includes broadband connectivity. A significant group of broadband-focused entities recently provided the Commission with an approach to contribution mechanisms that incorporates the specific intent "of significantly broadening contributions to fund universal broadband connectivity and linking broadband support to broadband connections."[51]

**3. Reform of access is dependent on the availability of USF to recover the costs of providing universal service.**

The RBA fully supports moving forward with rational reform of access and intercarrier compensation. As technology evolves, many rural carriers are experiencing a loss of access minutes, and the relative usage of rural networks will likely transition more toward data transmitted through broadband connectivity. Accordingly, the regulatory design for the recovery of costs incurred by universal service providers should be redesigned. In the absence of the identification of an additional source of revenue to recover universal service costs, there are three sources available: 1) rates charged to rural consumers (which must be "reasonably comparable;" 2) access and interconnection charges to other providers; and 3) USF. Assuming that rates charged to rural consumers are established at "reasonably comparable" levels, the only source from which to recover costs currently recovered from access is the USF.

The fact that intercarrier compensation reform requires the utilization of USF

[51] Letter of August 18, 2011 from Ad Hoc Telecommunications Users Committee, Google, Inc., Skype Communications S.A.R.L., Sprint Nextel Corporation, and Vonage Holdings Corp. to the FCC Chairman and Commissioners.

funding to replace access revenues was recognized in the NBP.[52] Blair Levin, the Executive Director of the Omnibus Broadband Initiative that produced the NBP, has noted in his consideration of reform of the USF that "It is likely that several billion dollars of the savings from the High-Cost fund will have to be put into a fund for revenue replacement resulting from intercarrier compensation reform."[53]

The *Further Inquiry* appears to ignore the recognition in the NBP that access reform for rural rate-of-return carriers may require significant shifting of cost recovery to the USF. Determining a track for rate reductions without first determining the resulting additional cost recovery requirement from the USF is another cart before the horse. In accordance with established statute, rules, and policy, the Commission should determine (in conjunction with the Joint Board, if intrastate service is involved) what portion of a rural rate-of-return carrier's costs should be reassigned from recovery through access charges to recovery from USF. Reductions in access charges will result from the reduction in the revenue requirement that is currently recovered from access.

With regard to intercarrier compensation reform, the Commission and the public interest will also be well served if the Commission follows the process established by the NPRM and first clarifies that access charges apply to VoIP services. The failure of the Commission to act on this issue in accordance with the Act and exiting rules and regulations has artificially suppressed the demand units to which access is applicable. This results in higher rates for those carriers that pay for the access services they utilize, while providers of service labeled VoIP inequitably avoid paying for switched access to

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[52] NBP, p. 148.

[53] "Universal Broadband – Targeting Investments To Deliver Broadband Services To All Americans," by Blair Levin, published by the Aspen Institute, 2010, p. 14.

complete calls on another carrier's network.

By acting first on the VoIP issue, the Commission will ensure that the framework for reform properly identifies the existing demand units and resulting access charge rate levels. If the Commission had long ago resolved this issue, the demand units of VoIP providers would have been included in the demand projections utilized to establish rates, and the access rates for rural rate-of-return carriers would likely be at a much lower level. Once the Commission acts on VoIP and rates are adjusted to reflect the additional demand units, the Commission can then determine the extent to which there is a factual basis to warrant further rate reductions by transferring cost recovery for rate-of-return carriers from the provision of access services to additional recovery from the USF.

The ABC Plan proposes a path for reducing interstate and intrastate[54] access rates, but budgets only a potential $300 million for cost recovery required for rural rate-of-return carriers that will result from the reduced access. The Joint Letter indicates, "To the extent, however, that sufficient funding is not expected for any reason to be available to provide the necessary levels of high-cost support and/or intercarrier compensation restructuring for carriers in any given year, any and all reductions in intercarrier compensation rates shall be deferred until such sufficient funding is confirmed to be available."[55]

The RBA supports the underlying intent of this statement in the Joint Letter. A rate-of-return carrier would be deprived of an opportunity to recover its lawful costs of providing universal services if it were required to reduce access charges and deprived of

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[54] The RBA concerns with the preemption of state regulation is set forth in Section II. B., and in the Attachment in response to related issues set forth in the *Further Inquiry*.

[55] "Joint Letter," (as referenced in the *Further Inquiry*), July 29, 2011, pp. 2-3.

revenue to recover the lost revenues. We respectfully suggest, however, that the more stable "horse in front of the cart" approach described above will better serve the public interest by providing rural universal service providers with clarity and stability.

As previously noted, additional "cart before the horse" issues are raised and addressed in the Attachment responding to the specific issues raised in the *Further Inquiry.*

## V. The Process Of Reforming USF and Intercarrier Compensation Will Be Enhanced If The Commission Takes Immediate Actions Consistent With Statutory Requirements To Preserve And Advance Universal Service While It Finalizes Long-Term Changes

To the extent that the Commission determines to go forward with the adoption of the framework set forth in the Joint Letter, or with any other proposals set forth in the *NPRM* or by any other party, the RBA respectfully maintains that no order will be sustainable unless it demonstrates clearly that rural rate-of-return carriers are provided a reasonable opportunity to recover the established expenses they have incurred in the provision of universal service and any and all additional expenses incurred to advance and maintain universals service. To the extent that a rural rate-of-return carrier cannot recover the costs of providing universal service from the provision of the services at "reasonably comparable" rates, any forthcoming order must demonstrate the provision of specific, predictable support mechanisms that provided funding sufficient for the carrier to recover its lawful costs.

The RBA has identified many actions that the Commission may undertake to move forward both expediently and in a manner consistent with statutory requirements.

Accordingly, the RBA respectfully urges the Commission to act immediately on the following:

1. Address the applicability of access to VoIP, phantom traffic and signaling rules, and access stimulation in accordance with the recommendations filed in the comments of the Joint Rural Associations on April 1, 2011.

2. Eliminate high cost funding on the basis of identical support with a transition period that provides CETCs the opportunity to recover the investments and expenses incurred in reliance on the existing rules. CETCs should be provided the opportunity to recover established expenses incurred to provide universal service on the basis of a cost showing similar to that utilized to determine support for rural rate-of return carriers.

3. Adopt the proposal to eliminate IAS and eliminate the distribution of USF through the HCMS. Provide non-rural price cap ETCs with the opportunity to recover established expenses incurred to provide universal service on the basis of a cost showing similar to that utilized to determine support for rural rate-of return carriers.

4. Establish interim modifications to the definition of universal service including broadband connectivity in order to better guide universal service providers with respect to the deployment of their networks. The RBA respectfully suggests that the record supports an initial universal service broadband connectivity speed of 1 Mbps up and 4 Mbps down, consistent with the record provided by the NBP. The Commission should also confer with the Joint Board in accordance with Section 254(c) of the Act and revise the universal service definition on a continuing basis.

5. Initiate an inquiry to determine how the distribution of USF may be leveraged through coordination with programs and funding mechanisms available from other governmental agencies including RUS.

6. Issue a further rulemaking on an expedited basis to facilitate access reform by:

> (1) considering alternatives to preemption of state regulation of access charges; and
>
> (2) considering the appropriate changes in the Commission rules that assign the recovery of costs to access services in order to transfer an appropriate portion of the cost recovery to the USF which will enable reductions in access charges resulting from a reduced access service revenue requirement.

## CONCLUSION

The provision of advanced telecommunications networks within small and rural communities is a cornerstone of future economic development and jobs recovery in those areas. Without these networks, connections will falter and jobs failures will follow. It is vital to rural America that the Commission effectively resolve the long-pending issues raised in this proceeding, and it is essential to rural economic development, job creation, and job preservation that the Commission gets it right. The Commission, therefore, has a two-front broadband battleground. First, to ensure that the unserved and underserved are served; and, second, but equally as important, to ensure that those communities that are currently well-served under today's standards can continue to evolve to and have available comparable service levels provided in urban areas. The Commission must succeed in both of these fronts and recognize the vital role that USF has played and can continue to play in the economic vitality of the rural areas communities served by the rural RoR carriers. These communities deserve nothing less.

Respectfully submitted,

THE RURAL BROADBAND ALLIANCE

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# Attachment to the Comments of the Rural Broadband Alliance

This attachment sets forth questions and issues raised by the Commission in the *Further Inquiry* issued on August 3, 2011. The section numbers and letters below are the same as that in the *Further Inquiry*. For convenience, the issues and questions raised by the *Further Inquiry* have been grouped together within sections for a collective response. The order in which the issues appear in the *Further Inquiry* has been retained. For the convenience of the reader, each group of issues and questions is preceded by the insertion of "**Issue"** and followed by the words of the Commission in *italics*. The italicized words are otherwise as set forth in the *Further Inquiry*. Each "**Issue**" is followed by the response of the RBA following the insertion of "**Response.**"

## I. Universal Service

### A. Separate Support for Mobile Broadband.

**Issue :** *We seek comment on providing separate funding for fixed broadband (wired or wireless) and mobility. How should the Commission set the relative budgets of two separate components? How should the budgets be revised over time?*

**Response:** The issue raised reflects a fundamental deficiency in the entirety of the prolonged process and proceedings established to bring much-needed reform to the distribution of the USF with respect to network support in high-cost-to-serve rural areas.

The Commission, in compliance with the duties delegated to it pursuant to Section 254 of the Communications Act ***must*** do its job and determine what constitutes universal service that is supported by the Federal universal service cost mechanisms. The processes employed by the Commission in this proceeding are replete with the harnessing of "carts before the horse, and that is nowhere more apparent than in the instance of this initial issue raised in the Commission's most recent Notice.

How can any party reasonably or rationally suggest a "budget" for the USF network support mechanisms until the Commission determines what is to be supported?

We agree that, at minimum, universal service should include the availability to all consumers of a provider of fixed broadband service and a provider of mobile broadband service. It is, however, for the Commission to determine on the basis of a factual record and consideration of the considerations set forth by Congress in Section 254(c)(1) of the Act.

The Joint Board and the Commission cannot determine what level funding is necessary to "budget" in order to achieve "specific, predictable and sufficient" support mechanisms for broadband universal service until the definition of universal service has been established.

We urge the Commission to fulfill its statutory obligations by requesting updated recommendations on "the definition of the services that are supported by Federal universal service support mechanisms" from the Joint Board consistent with the mandate of Sec. 254(c)(2). In the interim, the Commission should utilize the factual record provided to it in the National Broadband Plan to adopt a temporary modification to the existing definition of fixed broadband universals service to include broadband capability of 1 Mbps up and 4 Mbps down and a definition of mobile universal service to include broadband capability consistent with 3G.[56]

Nearly 18 months has passed since the Commission issued the recommendations set forth in the National Broadband Plan that was reported to have cost more than $20 million.[57] Taking into consideration the fundamental importance of broadband communications to the nation and in particular to the impact of the availability of robust broadband fixed and mobile communications on rural communities and economic development and job maintenance and creation in those communities, it is disappointing that the Commission is asking for comments on this issue at this late date.

**Issue** *In the USF/ICC Transformation NPRM, the Commission sought comment on phasing down high-cost support for competitive eligible telecommunications carriers (competitive ETCs) over 5 years and transitioning such support to the CAF. To what extent would projected savings associated with intercarrier compensation reform for wireless carriers as proposed in the ABC Plan help offset reductions in high-cost support for competitive ETCs? We ask parties to substantiate their comments with data and remind parties that they may file data under the protective order issued in this proceeding.*

**Response:** The question reflects another cart before the horse. How can the Commission meaningfully consider how reductions in intercarrier compensation

[56] See, e.g., The National Broadband Plan, pp. xiii, 135 and 145.
[57] "FCC Broadband Plan Cost $20 million," Post Tech, The Washington Post, http://voices.washingtonpost.com/posttech/2010/03/fcc_broadband_plan_cost_20_mil.html

expenses could offset high-cost support needs for competitive ETCs until the Commission determines what the high-cost support need is?

Irrespective of (and, in fact, with disregard to) the attempts of several competitive rural ETCs to obtain the Commission's consideration of the actual real operational cost needs of rural competitive ETCs by providing the Commission with factual data, the Commission has continued to provide competitive ETCs with USF on the basis of "identical support," a concept that is generally recognized as both discredited and responsible for the unbridled growth of the USF.

Rural Competitive ETCs have made investment commitments to bring universal wireless and fixed services to unserved and underserved rural areas of the nation. The expenses to which they have committed to fulfill the obligations of their designations as ETCs were made in reliance on the funding they anticipated pursuant to the Commission's existing rules. All rural ETCs – incumbent rural rate of return carriers, rural wireless providers and rural CLECs – incurred expenses to provide universal service in reliance that the funding from the universal service support mechanisms was sufficient and predictable. In the event that the Commission adopts a phase-out of support for competitive rural ETCs or any limitation on the cost-based support of rural rate-of-return carriers, the Commission should afford all rural ETCs the opportunity to demonstrate the actual costs they have incurred in the provision of universal service and provide the funding necessary to recover those costs.

## B. Elimination of Rural and Non-Rural Carrier Distinctions.

**Issue** *In the USF/ICC Transformation NPRM, the Commission sought comment on two potential paths for the long term CAF: (1) use a competitive, technology-neutral bidding process to determine CAF recipients; or (2) offer the current voice carrier of last resort a right of first refusal to serve the area for an amount of ongoing support determined by a cost model, with a competitive process if the incumbent refuses the offer. Several parties that jointly filed a letter proposing a path for reform propose a hybrid system in which support would be determined under a combination of a forward-looking cost model and competitive bidding in areas served by price cap companies, while companies that today are regulated under a rate of return methodology would continue to receive support based on embedded costs, albeit with greater accountability and cost controls. Similarly, the State Members suggest that a forward-looking model be used for price cap companies, while rate of return companies would have the option of receiving support under a model or based on embedded costs. We seek comment on the policy implications of eliminating the current references to rural and non-rural carriers in our rules and of adopting two separate approaches to determining support for carriers that operate in rural areas*

*that are uneconomic to serve, based on whether a company is regulated under rate of return or price caps in the interstate jurisdiction.*

**Response** The Commission has only a single rational basis upon which to distribute USF high cost network support on the record before it, notwithstanding the fact that the Commission continues to distribute high cost network support on the basis of three different mechanisms.

The unchallenged basis is an actual cost methodology. Under this methodology, the Commission determines what constitutes universal service. The ETC reports its costs to provide universal service, subject to the Commission's review and scrutiny.[58] The cost-based methodology establishes the funding level sufficient for the carrier to be able to recover its costs while charging rates for services that the Commission deems to be "comparable."[59]

The Commission utilizes this cost-based approach only for rural rate-of-return carriers. This approach has resulted in the deployment of universal service with specific encouragement to rural incumbent carriers to deploy networks with advanced service capabilities. The process is entirely transparent; every dollar of funding can be associated with actual expenses incurred to provide service and the funding of every expense is subject to the Commission's exercise of reasonable discretion in the determination of whether the expense is prudent, just and reasonable.

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[58] See, 47 CFR Parts 64, 32 and 36. Although the Commission has not adopted rules to determine the costs a wireless ETC provider incurs to provide universal service, parties have offered on the record suggestions to implement a cost-based methodology. The question in this regard should not be "whether the Commission should implement any such methodology," but "how could the Commission have undertaken to distribute so much universal service funding to wireless ETCs without knowing what it actually costs the recipients to provide universal service and how much funding is needed to ensure that the recipient receives only sufficient funding to enable it to provide universal service at 'comparable' rates?"

[59] In this regard, we respectfully note that the Commission has limited its consideration of rates to federal subscriber line charges and interstate access charges. In the more than 15 years that have passed since the passage of the Communications Act of 1996 and the codification of universal service in Section 254, the Commission has not determined whether universal service funding is sufficient to provide "quality services at just, reasonable, and affordable rates," consistent with the Universal Service Principles set forth at Sec. 254(b) of the Act.

In contrast, the Commission has provided universal service funding for high cost support to price-cap incumbent carriers on the basis of a discredited model. The model is the subject of a continuing challenge (commonly referred to as the "10th Circuit Remand") and the Commission has failed to provide a sustainable basis for the utilization of the model.[60]

The third methodology utilized by the Commission to distribute USF for network support is the discredited "identical support" rule applied to distributions to competitive ETCs without regard for the actual costs incurred to provide universal service.

In the absence of a rational and sustainable basis to distribute USF for high-cost network support other than the cost-based methodology applied to rural rate-of-return carriers, we respectfully conclude that the Commission should treat all ETCs consistently and distribute USF for high cost support on the basis of the actual prudent, just and reasonable expenses incurred by the ETC to provide universal service in excess of the costs they may reasonably incur from the provision of services at reasonable and "comparable" rates.

The distinction between "rural" and "non-rural" carrier must be maintained with respect to the designation of ETCs consistent with the utilization of these terms in Section 214 of the Act.

## C. CAF Support for Price Cap Areas.

### 1. Use of a Model.

**ISSUE** *Both the State Members and the ABC Plan would use a forward-looking model to determine support amounts for areas where there is no private sector business case to offer broadband. We seek comment on what information would need to be filed in the record regarding the CostQuest Broadband Analysis Tool (CQBAT model) for the Commission to consider adopting it, as proposed in the ABC Plan.*

*The ABC Plan proposes using one technology to determine the modeled costs of 4 Mbps download/768 kbps upload service, while permitting support recipients to use any technology capable of meeting those requirements. Should the amounts determined by a model be adjusted to reflect the technology actually deployed?*

*Is ten years an appropriate time frame for determining support levels, given statutory requirements for an evolving definition of universal service?*

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[60] *Qwest Communications Int'l, Inc. v. FCC*, 398 F.3d 1222 (10th Cir. 2005)

*Should the model reflect the costs of building a network capable of meeting future consumer demand for higher bandwidth that reasonably can be anticipated five years from now?*

**Response** The adoption of any model without a clear and sustainable basis would be inequitable to all parties and, most significantly, harm the public interest if the model is adopted before the Commission establishes a rational universal service policy that defines universal service including broadband capability. The Commission should take care not to create another quagmire similar either to the adoption of the questionable model that is the subject of the 10th Circuit Remand or the utilization of the "identical support rule" and the resulting distribution of universal service funding without any regard for actual costs and sufficiency.

In the final analysis the only reason for support funding is to ensure that reasonably comparable rates are available to consumers residing in high cost to serve areas. Irrespective of models and economic theories, the reality is that there are real costs to build and operate a network to provide universal service. At best, a model is a representative prediction of these costs. If the Commission elects to utilize a model, great care should be taken to ensure that any model renders an accurate rendition of actual costs in order to advance and preserve universal service. If the model estimates too high, it will provide support in excess of what should be required. If it estimates costs too low, there will be insufficient support to build and maintain a network that provides reasonably comparable services. Given this reality and the Commission's prior experience with models, the RBA questions the basis upon which the Commission would prefer to base the distribution of USF on a model instead of actual costs deemed prudent, just and reasonable.

With specific regard to the question set forth above regarding the CQBAT model, all information related to the model, its development, assumptions, and mechanics should be made available to the public before the model is adopted. The Commission is well aware of how to provide an appropriate process for the public to be able to review the input and mechanics of models in the context of the process pursuant to which the Commission reviews and revises average schedules for interstate access services.

The Commission and all parties should recognize, however, that a rural RoR carrier must retain the opportunity to obtain support based on its actual costs. No model could ever sufficiently predict in every instance and circumstance the costs of providing universal service under any and all circumstances. Accordingly, there should always be a safety valve process based on actual costs available to all ETCs to address any instance where the model and resulting benchmarks are not adequate to ensure the provision of universal service.

## 2. Right of First Refusal (ROFR)

**Issues:** *The ABC Plan would give an incumbent local exchange carrier (LEC) the opportunity to accept or decline a model-determined support amount in a wire center if the incumbent LEC has already made high-speed Internet service available to more than 35 percent of the service locations in the wire center. We seek comment on this proposal. Would aggregating census blocks to something other than a wire center be an improvement to the proposal?*

*Is 35 percent a reasonable threshold?*

*Should areas that are overlapped by an unsubsidized facilities-based provider be excluded when calculating the percentage?*

*Is the opportunity to exercise a ROFR reasonable consideration for an incumbent LEC's ongoing responsibility to serve as a voice carrier of last resort throughout its study areas, even as legacy support flows are being phased down?*

*Should any ROFR go to the provider with the most broadband deployment in the relevant area rather than automatically to the incumbent LEC?*

*Alternatively, if there are at least two providers in the relevant area that exceed the threshold, should the Commission use competitive bidding to select the support recipient?*

**Response:** These issues address the designation of the ETC that will receive USF for network support to provide universal service to consumers residing in areas where a price-cap carrier is the incumbent provider. The questions raised imply the assumption that only one provider of fixed broadband universal service will receive funding support to deploy a universal service network in any defined area.

The resolution of the questions raised does not reside in the competing comments of various parties. Section 214 of the Act directs the resolution of these issues. While the FCC may determine that USF network support may be directed to only a single provider of fixed broadband service in any given area, the Congress specifically determined that it is the state commission that determines the designation of the common carrier that meets the requirements to be the ETC.

Congress and the Act are very clear. The FCC may establish criteria applicable to a carrier seeking ETC designation, but it cannot design a system to replace the discretion of the state commission in the designation of the ETC. The Act clearly identifies the exceptions when the FCC may designate the ETC. Specifically, if no common carrier is willing to provide universal service in an unserved area, the Commission has the authority to designate a common carrier to provide universal

service in the unserved area.[61] The Commission may also designate a common carrier as an ETC in the instance of a telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.[62]

While the proposals set forth above may be considered by the States, the FCC cannot impose this framework for designation of ETCs to receive network support on the State Commissions. The state commissions are closer to the customers in each state and they have a vital interest in making the public interest determination regarding which carrier may best serve as an ETC. The state commission's concern and interest, recognized in the Act, would become even more pronounced in an environment in which the FCC has determined that network support funding will be provided to only a single provider of fixed service in any given area.

Even if the Commission could impose a framework to direct the State Commissions in their designation of which carrier to choose as the single ETC recipient of network support in a given area, the proposed rules for areas served by price cap company incumbents have severe deficiencies that raise questions of equity and equal protection. While the statutory distinction between rural carriers and non-rural carriers provides a rational basis to apply the "right of first refusal" to rural carrier ETCs within their established study areas, there is no basis to apply the "right of first refusal" in a non-rural carrier area. Many rural rate-of-return carriers abut unserved and underserved rural areas served by incumbent non-rural carriers.

The rural rate-of-return carrier may be able to utilize its established network facilities to extend broadband universal service to the unserved or underserved nearby communities on a more efficient basis than the non-rural incumbent carrier. The opportunity to serve the public interest by leveraging the networks established by rural rate-of-return carriers through their extension of service to nearby communities should be encouraged instead of discouraged through the implementation of a "right of first refusal" for non-rural price cap carriers that have previously determined that their interests are better served by increasing profits through a move to price cap regulation instead of building networks in high cost to serve areas on the basis of cost-based rate-of-return regulation.

### 3. Public Interest Obligations

**Issue** *Last year, the Federal-State Joint Board on Universal Service recommended that the Commission adopt a principle "that universal service support*

[61] 47 USC § 214(E)(3)
[62] 47 USC § 214(E)(6)

*should be directed where possible to networks that provide advanced services, as well as voice services." If that recommendation is adopted, how could the CQBAT model be improved to account for the costs of providing both broadband and voice service?*

**Response:** The information provided regarding the CQBAT model together with the limited time allowed for response to the August 3 Notice do not permit the opportunity to undertake substantive analysis of the model to enable a meaningful response to the issue of "how could the CQBAT model be improved to account for the costs of providing both broadband and voice service." Should the Commission elect to utilize a model to assist in the determination of funding from the USF necessary to provide that amount necessary and sufficient to deploy universal service in any high-cost-to-serve rural area, we respectfully note that the model cannot possibly be useful if it does not address the costs and funding needs to provide all of the services and network functionalities that the Commission ultimately includes within the universal service definition. It would be nonsensical to segregate funding for a broadband universal service capability from the costs and funding requirements related to the provision of other established universal services.

**Issue** *The State Members propose that recipients of support meet specific broadband build-out milestones at years 1, 3 and 5 of deployment. A company that exceeded a specified minimum standard, but failed to meet the higher standard at a given milestone would receive a pro rata share of support. We seek comment on what specific interim milestones would be effective in ensuring that carriers receiving CAF support are building out broadband at a reasonable rate during the specified build-out period.*

**Response:** There is no factual basis in the record upon which to establish specific generally applicable milestones with regard to a build-out rate. Each unserved and underserved area will have distinct characteristics that will affect build-out; moreover, the level of funding made available to any carrier to provide service in an unserved or underserved area will drive the pace at which build-out can occur. This appears to be another "cart before the horse" question. The Commission is best advised, in the absence of a factual basis to do otherwise, to utilize the established ETC designation and annual certifications processes conducted by the state commissions to ensure that the funding is properly directed and expended by recipient carriers.

**Issue** *The ABC Plan proposes that CAF recipients provide broadband service that meets specified bandwidth requirements to all locations within a supported area, but does not address the pricing of such services or usage allowances. Should the Commission adopt reporting requirements for supported providers regarding pricing*

*and usage allowances to facilitate its ability to ensure that consumers in rural areas are receiving reasonably comparable services at reasonably comparable rates?*

**Response:** While we are concerned in other instances that questions raised by the August 3 Notice place the "cart before the horse," this question suggests a chilling concern that the Commission would even consider "letting the horse out of the barn" without regard for the established statutory duties. It is difficult to conceive how the Commission would contemplate fulfilling its duty to the public to "ensure that universal service is available at rates that are just, reasonable, and affordable"[63] if it fails to work with the States to ensure that universal service fund recipients are fulfilling their responsibilities to "use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[64]

By definition, support payments should only be provided where reasonably comparable rates are not sufficient to provide the recovery of costs incurred to provide universal service. In the absence of a requirement to ensure that USF recipients provide universal services at "reasonably comparable" rates, how could the Commission determine what funding level is sufficient to advance and preserve universal service? And, how could the Commission ensure achievement of the specific objective of Universal Service to provide rural consumers with reasonably comparable services at reasonably comparable rates?

## 4. Eligible Telecommunications Carrier (ETC) Requirements

**Issue:** *The ABC Plan proposes a procurement model, in which recipients of CAF support incur service obligations only to the extent they agree to perform them in explicit agreements with the Commission, and CAF recipients are free to use any technology, wireline or wireless, that meets specified bandwidth and service requirements. What specific rule changes to the Commission's rules, including Part 54, Subpart C of the Commission's rules, would be necessary to implement such a proposal?*

**Response:** Irrespective of what form of documentation and monitoring is utilized with respect to the distribution of high cost network support to providers of universal service, the statutory framework of responsibilities of both fund recipients and the Commission is clear. To the extent that the issue raised above suggests that the Commission and a fund recipient can contract away universal service

[63] 47 USC § 254(i)
[64] 47 USC § 254(e)

responsibilities is neither consistent with the public interest nor sustainable under the Act.

## 5. State Role

**Issues:** *The State Members and other commenters propose an ongoing role for states in monitoring and oversight over recipients of universal service support. We seek comment on specific illustrative areas where the states could work in partnership with the Commission in advancing universal service, subject to a uniform national framework, and invite comments on other suggestions. For example:*

*Were the Commission to adopt a ROFR mechanism, could the states determine whether a provider has already made a substantial broadband investment in a particular area, and therefore would be eligible to be offered support amounts determined under a forward-looking model?*

*Should ETCs be required to file copies of all information submitted to the Commission regarding compliance with public interest obligations with the states, as well as with USAC?*

*The ABC Plan contemplates that CAF recipients would serve all business and residential locations within a supported area, but does not specifically address the obligation to serve newly built locations within a supported area over the ten-year term of the funding. Should states be charged with determining whether any charges for extending service to newly constructed buildings are reasonable, based on local conditions?*

*Should states collect information regarding customer complaints, including complaints about unfulfilled service requests and inadequate service?*

**Response:** Neither the Commission nor any party can successfully utilize this rulemaking proceeding to usurp the statutory authority delegated to the state commissions. The significant role of the state commissions with regard to the designation of ETCs and consumer protection with respect to the ongoing availability of universal service is clearly established by Congress in the Act. Accordingly, any new process or procedure adopted in this proceeding must be consistent with the statute and not impede the ability of state commissions to fulfill the role Congress has determined can best be done by the state commissions. In this regard, and as discussed previously, the FCC should not attempt to adopt a rule requiring a state commission to provide an incumbent non-rural price-cap telephone company a "right of first refusal" to obtain funding to support the build-out and maintenance of the network required to provide universal service in an area served by the incumbent price-cap carrier.

The exercise of discretion by the state commission should not be limited. The state commission, the closest governmental regulatory entity to both the providers and the consumers in any given high-cost-to-serve area, should be free to exercise its authority to designate as the ETC recipient of network support the provider that it deems will best serve the public interest, consistent with Section 214(e). There should be no restriction on the state commission that prevents it from determining that both serving the public interest and most efficiently utilizing funding from the USF may be best achieved by designating a carrier other than the price-cap incumbent including a rural local exchange carrier or rural cable provider that has nearby network facilities that can be leveraged to bring advanced services into the unserved and underserved areas where the price cap carrier is the incumbent LEC.

## D. Reforms for Rate-of-Return Carriers.

*In light of the RLEC Plan and the Joint Letter, as well proposals by the State Members, we seek comment below on specific issues relating to universal service support for rate-of-return companies.*

**Issue** *Re-examining the Interstate Rate of Return. The Joint Letter proposes that CAF calculations for areas served by rate-of-return companies would be calculated using a 10 percent interstate rate of return. The State Members recommended that the rate of return for universal service calculations be set at 8.5 percent. We seek comment on what data the Commission would need to have in the record to enable it to waive the requirements in Part 65 of the Commission's rules for a rate of return prescription proceeding, so that the Commission could quickly adopt a particular rate of return.*

**Response** We understand that the proposed 10 percent interstate rate of return proposed in the Joint Letter is one aspect of many in a proposed framework that results from an effort by multiple parties to reach a consensus to provide to the Commission. With regard to the Commission's apparent desire to "*quickly adopt a particular rate of return*," we have not identified any set of data that is less than that which is required for a rate of return prescription under the Commission's rules.

It may be helpful to the Commission to take official notice[65] on the record of the plethora of financial investment information that suggests the shrinking availability of both equity and debt financing for the provision of telecommunications services in rural high-cost-to-serve areas. The publicly available data likely justifies a return far higher than the proposed 10% rate of return given the exacerbated uncertainty of cost recovery with the limitation of funding contemplated by the Commission.

[65] See, e.g., 47 CFR § 65.301

**Issue** *Corporate Operations Expense Limitation Formula. We seek comment on applying the following formula to limit recovery of corporate operations expenses for high-cost loop support (HCLS), interstate common line support (ICLS), and local switching support (LSS).*
*For study areas with 6,000 or fewer working loops, the monthly amount per loop shall be limited to;*

*$42.337 – (.00328 x the number of working loops) or $50,000/the number of working loops, whichever is greater*

*For study areas with more than 6,000 working loops, but fewer than 17,888 working loops, the monthly amount per loop shall be limited to;*

*$3.007 + (117,990/number of working loops)*

*For study areas with 17,888 or more working loops, the monthly amount per loop shall be limited to;*

*$9.52 per working loop*

**Response** We recognize that the proposed application of the corporate expense cap is included in the RLEC Plan and, therefore, implicitly included in the framework set forth in the Joint Letter that reflects the carefully constructed results of an effort by multiple parties to reach a consensus to provide to the Commission. In the event that the Commission adopts the proposed application of the corporate expense limitation formula, we respectfully suggest that the Commission provide rural rate-of-return carriers with a streamlined process to demonstrate the continuing prudent basis of established expense levels. The Commission must recognize that established expenses of rural incumbent rate-of-return carriers have been subject to continued review, scrutiny and audit. In the absence of a specific fact-based finding to the contrary, there is no basis for the Commission to abruptly reverse course in the treatment of expenses that have not been deemed imprudent or unjust or unreasonable.

**Issue** ***Eliminating Support for Areas with an Unsubsidized Competitor****. In responding to the NPRM, the RLEC Plan suggested that the Commission could establish a process to reduce an incumbent's support if another facilities-based provider proves that it provides sufficient broadband and voice service to at least 95 percent of the households in the incumbent's study area without any support or cross-subsidy.*

*We seek comment on such a process, including how to allocate costs to the remaining portions of the incumbent's study area for purposes of determining universal service support.*

*Would a cost model be a way to allocate costs between the subsidized and unsubsidized portion of a rate-of-return study area that overlaps substantially with an unsubsidized competitor?*

*Could state commissions administer proceedings to consider such challenges, similar to the suggestion in the ABC Plan that state commissions could elect to determine which census blocks served by price cap companies have unsubsidized competitors, and therefore are not eligible for CAF support?*

**Response** The appropriate and rational resolution of this issue is tied to separate consideration of existing network investment from consideration of additional future investment required to provide universal service. There is no need to incur unnecessary costs to disaggregate costs of existing investments in the study areas of rural rate-of-return carriers. The related existing expenses have been identified and must be recovered in order for the rural rate-of-return carrier to sustain its provision of service.

With respect to additional investment supported by USF, under the Commission's proposals, the "donut hole" problem is taken care of - the funding only goes to areas where funding is required to bring service to unserved or underserved area and to maintain universal service where it would not be maintained in the absence of funding.

**Issue** *Limits on Reimbursable Operating and Capital Costs. We seek comment on limiting reimbursable levels of capital investment and operating expenses for LSS.*

**Response** There is no basis to limit the reimbursable levels of capital investment and operating expenses for LSS with respect to existing investments incurred by rural rate-of-return carriers. To the contrary, the record before the commission fully demonstrates the rational basis for the continued utilization of LSS to recover existing investment. If the Commission seeks to limit future switching investment reliance on LSS, we urge the Commission to establish guidance with specificity to ensure that: 1) rural rate-of-return providers are fully informed with regard to why particular investment is or is not encouraged by the Commission; and 2) the extent to which the Commission will limit recovery from the USF of any portion of any such investment required for the provision of universal service in a high cost-to-serve area, and the specific basis for any such limitation. This information is needed by rate-of-return providers in order to make prudent network investment decisions. This goes to the heart of the reason that the Congress directed the Commission to establish "specific and predictable support mechanisms."

## E. Ensuring Consumer Equity

**Issue** *Rate Benchmark. In the USF/ICC Transformation NPRM, the Commission sought comment on the use of a rate benchmark to encourage states to rebalance their rates and ensure that universal service does not subsidize carriers with artificially low rates. In response to the NPRM, one commenter suggested that we should develop a benchmark for voice service and reduce a carrier's high-cost support by the amount that its rate falls below the benchmark. Under such an approach, the Commission would reduce intrastate universal service support (specifically, HCLS for rural carriers and high-cost model support (HCMS) for non-rural carriers) dollar for dollar during the transition to CAF to the extent the company's local rates do not meet the specified* benchmark*. These reductions would not flow to other recipients. We seek comment on this proposal and proposed variations on it.*

*Should we set the initial benchmark using the most recently available data that the Commission has regarding local rates? For example, according to the 2008 Reference Book of Rates, the average monthly charge for flat-rate service was $15.62 per month. Using the same data, the average monthly charge for flat-rate service, plus subscriber line charges of $5.74 per month, would total $21.36 per month. Should the benchmark rise over a period of three years, for instance, with an end point of $25-$30 (or some other amount) for the total of the local residential rate, federal subscriber line charge (SLC), state subscriber line charge, mandatory extended area service charges, and per-line contribution to a state's high cost fund, if one exists? Should this benchmark be the same as the ICC benchmark?*

**Response** The questions above related to "benchmarks" in reality are associated with the fundamental purpose of the Universal Service Fund with respect to the provision of service in rural and high cost areas:

> Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.[66]

The question raised at this late date not only reflects another "cart before the horse" issue, but also raises a "missing link" concern. While the focus of the proceeding is on the utilization of the USF to support the provision of broadband services, there is a void in factual consideration of what level of broadband service quality and rates should be deemed "comparable" – the missing link. As discussed earlier, in order to fulfill its duties pursuant to the Act with regard to the establishment and

[66] 47 USC § 254(b)(3)

maintenance of sufficient and predictable support mechanisms, the Commission must initially determine what services and network capabilities constitute universal service; the Commission cannot possibly establish sufficient and predictable support mechanisms in the absence of an understanding of what constitutes universal service, what universal service costs to provide, and what the comparable rates are for the provision of universal service.

The concept is not complex. The provision of universal service has real, identifiable costs; and universal services can be provided in rural areas at real, identifiable rates "that are reasonably comparable to rates charged for similar services in urban areas." The difference between the costs incurred to provide the services and that portion of the costs that can be recovered from the "comparable" rates charged for the services is the amount of support that is "sufficient" to foster the provision of universal service.

**Issue** *Total company earnings review. The State Members recommended that a Provider of Last Resort Fund include a total company earnings review to limit a supported carrier from earning more than a reasonable return. We seek to further develop the record on the mechanics of conducting an earnings review to ensure that universal service is not providing excessive support to the detriment of consumers across the United States.*

**Response** Under existing rules, the distribution of USF to rural rate-of-return carriers is specifically tied to cost-based formula derived amounts determined on the basis of regulated cost accounting and the apportionment of costs between the interstate and intrastate jurisdictions. The accounting and high cost allocation procedures essentially function to allocate an additional percentage of costs to the interstate jurisdiction when universal service is provided by a rate-of-return carriers serving a high cost-to-serve area. As a result of the Commission's cap on the High Cost Loop fund, a growing portion of the costs that are reassigned to the interstate jurisdiction, however, are not recovered.

While it may be academically possible, as suggested by the question above, that a rural rate-of- return carrier is earning on its intrastate allocated investment to an extent that results in cost recovery that would offset USF support needs, it is more likely that most rural rate-of-return companies are "under-recovering" on a "total company earnings review" basis. While rural rate-of-return carriers retain the obligations of providing and maintaining networks as carriers of last resort throughout their service areas, they are generally losing intrastate regulated revenues as they experience line loss and access charge avoidance.

**Issue** *We seek comment on the State Members' recommendation that, at least initially, the support mechanism should not factor in either the revenues or marginal costs of video operations to avoid the risk of subsidizing video operating losses attributable to unregulated programming costs.*

**Response** The Commission has a well established framework (Part 64.901 of the Commission's rules[67]) pursuant to which the costs of providing universal services can be accounted for separately from the costs or providing non-regulated service (such as a video operation) when both the regulated universal service and the deregulated service utilize the same network.

**Issue** *We seek comment on what total company rate of return should be used, what the mechanism should be for reducing support to the extent that total company rate of return is exceeded, and how often a total company earnings review should be conducted.*

**Response** As the Commission is aware, the determination of interstate rate of return is determined pursuant to Part 65 of the Commission's rules; and, in those states where rate-of-return regulation is applicable, the determination of the intrastate rate-of-return is subject to state law.

Under the existing rules, the Commission has the opportunity annually to review a rate-of-return carrier's costs and to ensure that the USF distribution together with access revenues and subscriber line charges provides recovery of the carrier's interstate costs. There is no basis in the record or in the Notice that sets forth why the existing mechanism should be revised.

**Issue** *We seek comment on what carriers should be required to submit to USAC, in a standard format, to facilitate a total company earnings review. For example, should we require submission of the audited financial statements for the incumbent LEC, a consolidated balance sheet and income statement for the incumbent LEC and its affiliates, a list of affiliates, a schedule showing dividends paid to shareholders or patronage refunds distributed to members of cooperatives for the last five years, a Cost Allocation Manual, an explanation of how revenues from bundled services are booked, a trial balance of accounts at a Class B accounting level or greater, and the number of retail customers served by the incumbent LEC and its affiliates for voice and broadband service?*

**Response** Pursuant to existing rules and regulations, the USF funds only the recovery of those costs that the Commission has determined to be interstate on the basis of cost separations rules recommended by the Federal-State Joint Board.[68]

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[67] 47 CFR § 64.901

[68] 47 USC § 410.

Accordingly, the matter of intrastate cost recovery is not a relevant consideration.

There is, however, a growing cost recovery problem that results from the imposition of a cap on the High Cost Loop fund. Costs that are assigned to the interstate jurisdiction for recovery from the HCL fund pursuant to separations rules are essentially reassigned to the intrastate jurisdiction because of the insufficiency of the Fund. Consideration of the impact of this result on a rural incumbent rate-of-return carrier may properly be addressed by the Commission in conjunction with the Federal-State Joint Board; the state members of the Joint Board are best placed to address the issues set forth above related total company return to the extent the Commission addresses the impact of its policies on total company cost recovery. We respectfully note that the questions related to the payment of dividends to shareholders or patronage refunds to cooperative members are completely irrelevant to the cost of providing universal service and the recovery of those costs. Similarly, the question above addressing "an explanation of how revenues from bundled services are booked" suggests a mis-focus of the inquiry. The booking of the revenues of universal service bundled with non-universal services does not change the cost of the service. The critical issue under the Act is whether the universal service is provided at "comparable rates" and ensuring that the costs associated with a network providing both universal services and non-universal services are properly allocated in order to avoid improper subsidy of competitive services.[69] If this is the underlying issue that drives the questions in the issue set forth above, we respectfully note that the Commission established its Part 64 regulated/deregulated accounting rules to address this very concern.

## F. Highest-Cost Areas.

**Issue** *The ABC Plan would rely on satellite broadband to serve extremely high-cost areas. We seek comment on a proposal by ViaSat to create a Competitive Technologies Fund to distribute support through a combination of a reverse auction and consumer vouchers to enable consumers in highest-cost areas to obtain service from wireless, satellite, or other providers.*

**Response** We respectfully challenge the apparent assumption that rural consumers that reside in "extremely high-cost areas" should be relegated to a reduced level of universal service. If Congress directed the Commission to limit the availability of funding to achieve the purpose of Section 254 of the Act (and it should be noted that Congress has not issued any such directive), the Commission would be required to establish a rational basis for implementing a determination to direct the limitation to consumers residing in "extremely high-cost areas."

[69] 47 USC § 254(k).

In the event that the Commission does nonetheless relegate a class of rural consumers to Satellite broadband, there is no basis to establish network support or consumer "vouchers" to support the satellite service in the absence of a factual record that demonstrates why it would cost more for a satellite provider to deliver service in a sparsely populated rural area than in a densely populated urban area. While any provider, including a satellite provider, that qualifies for ETC status may participate in the established lifeline and link-up programs, there is no basis to provide any additional USF to a satellite provider in the absence of a factual record demonstrating the need for the support.

**Issue** *We also seek comment on what obligations are appropriate to impose on recipients of funding, as a condition of receiving support, to facilitate provisioning by others in areas the recipients are not obligated to serve. For example, Public Knowledge has proposed to require recipients to make interconnection points and backhaul capacity available so that unserved high-cost communities could deploy their own broadband networks. Should recipients' Acceptable Use Policies also be required to allow customers to share their broadband connections with unserved customers nearby, for example, through the use of WiFi combined with directional antenna technology?*

**Response** In accordance with the Act and the Commission's rules and regulations, there is an established process to identify and enforce the obligations of recipients of universal service support. Any additions or modifications should be implemented consistent with the requirements of the Act through a rulemaking process.

### G. CAF Support for Alaska, Hawaii, Tribal lands, U.S. Territories, and Other Areas

**Issue** *GCI has proposed an Alaska-specific set of universal service reforms that it asserts better reflect the operating conditions in Alaska and the lower level of broadband and mobile deployment in that state. We seek comment on this proposal for Alaska, and ask whether this, or a similar approach, would also be warranted for Hawaii, Tribal lands, the U.S. Territories, or other particular areas, and how we should consider such proposals in light of the Tribal lands exclusion from the current cap on high-cost support for competitive ETCs.*

*We further seek comment on other proposals relating to Alaska and Hawaii that have been proposed in the record. We further seek comment on how such proposals could be improved, if the Commission were to adopt a plan to constrain the size of the CAF and access restructuring within a $4.5 billion annual budget, and whether, in the alternative, other modifications are warranted to the national policy to better reflect operating conditions in these areas.*

**Response** The Commission has an established record pursuant to which it has recognized special considerations regarding the universal service needs in Alaska, Hawaii, Tribal Lands, certain U.S. Territories and insular areas. Accordingly, the Commission cannot and should not reverse its underlying policy of affording special consideration to the provision of service in these areas in the absence of a factual finding supporting a change in policy.

The issue set forth above, however, also notes the need to consider "*the Tribal lands exclusion from the current cap on high-cost support for competitive ETCs.*" The effect of this rule is unsustainable to the extent that it enables carriers that are not subject to rate-of-return regulation to recover more than the actual costs they incur in the provision of universal service. While the Commission may act to ensure that the consumers residing in these areas have access to universal service as a result of ensuring sufficient predictable support mechanisms there is no basis to provide support to any carrier that is in excess of the amount sufficient to ensure universal service. In the absence of a sustainable model that predicts the USF funding requirements for network support in Alaska, Hawaii, Tribal lands, and certain U.S. Territories, providers of universal service in these areas can best be assured of sufficient and predictable support by determining their funding on the basis of their actual costs in accordance with the specific rules applicable to the universal service providers subject to rate-of-return regulation that provide universal service in these areas.

## H. Implementing Reform within a Defined Budget.

**Issue** *The ABC Plan recommends a five-year transition for phasing down legacy funding, concomitant with a phase-in of potential CAF support, including potential access recovery associated with intercarrier compensation reform; the Joint Letter suggests several potential measures that could be taken to keep support totals within a budget, such as phasing in funding for mobility, deferring CAF funding for study areas served by particular price cap companies, or deferring reductions in intercarrier compensation. We seek comment on the implications of these and alternative proposals, including variations to the Commission's prior proposals regarding safety net additive (SNA) and LSS, for ensuring that total funding remains within a defined budget.*

**Response** The framing of this issue once again highlights the fundamentally flawed "cart before the horse" problem with the process undertaken by the Commission. We assume that when the Commission refers to "budget" in setting for the above issue, it means the fulfillment of its statutory duty to determine the level of funding necessary and sufficient to preserve and advance universal service. How

can the Commission "budget" for universal service that includes broadband capability until it determines what constitutes universal broadband service?[70] The concept of "*deferring CAF funding for study areas served by particular price cap companies,*" as referenced in the issue set forth above, is replete with several infirmities that are inconsistent with the Act. The purpose of Universal Service funding for network support in high cost areas is, of course, to ensure that rural consumers are provided with universal service. The result of years of failed policies including the discredited identical support rule and the still-challenged failed high-cost model for non-rural carriers is that significant numbers of consumers residing in areas served by price cap company incumbents have been relegated to second class service.

The price cap incumbent companies are not exclusively responsible for this result. They rationally chose the price cap regulatory framework that the Commission provided to them and made rational network investment decisions based on the regulation the Commission provided.

The very notion that the Commission would now adopt a policy to defer the provision of universal service support directed to neglected consumers because they happen to reside in the service area of a "*particular price cap"* company is absurd and contrary to Section 254 of the Act. While a "*particular price cap*" company may propose to defer support payments, is it also deferring the provision of universal service? Alternatively, if the "*particular price cap*" commits to the provision of universals service irrespective of the deferral of universal service support, is USF support in the "deferred" area necessary? As previously discussed, the FCC should not entertain the notion that a price-cap company has a "right of first refusal" to obtain USF network support, much less the idea that the price-cap

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[70] This is hardly the first instance in which the RBA has raised this concern to the Commission. In a December 15, 2010 letter to FCC Secretary Marlene H. Dortch providing a Notice of a December 14, 2010 *ex parte* meeting, the RBA stated: "As the Commission goes forward in its effort to formulate appropriate changes in the universal service funding mechanism to address the evolving need for broadband connectivity throughout the nation, the Alliance suggests that the first needed step is for the Commission to renew and complete its effort to review and revise what services and functionalities should be included in the definition of universal service… By moving expediently to redefine the level of telecommunications services and network functionalities included in the definition of universal service in a manner consistent with the Commission's duties pursuant to § 254(c)(1) of the Act, the Commission will set the necessary foundation to move forward with the consideration and resolution of needed changes to the Universal Service Fund mechanisms." That was December 15, 2010 – nearly 9 months ago and 9 months after the issuance of the Broadband Plan.

company can "defer" universal service obligations if it chooses to continue its designation as an ETC and seeks network support.

The issue set forth above also raises the question of whether the FCC may "*keep support totals within a budget*" by "*deferring reductions in intercarrier compensation.*" This question implicitly recognizes that reductions in access charges will result in reduced revenues that rural rate-of-return carriers and rural CLECs rely upon, in accordance with established Commission policy and rules, to recover a portion of their costs. As further discussed below in Section II regarding Intercarrier Compensation, this question reflects yet another "cart before the horse." Under its existing rules and policy, the Commission has an established obligation to afford rural carriers (both rural incumbent carriers and rural CLECs) the opportunity to recover the costs that are currently recovered from access.

Assuming that charges to rural consumers for universal service are established at "comparable" prices and that those charges cannot be further increased, the only other source of revenues from which the rural carriers may recover their costs is the universal service fund. Once the Commission establishes the definition of universal service, including broadband capability, it can determine the funding needed to provide sufficient and predictable mechanisms to "preserve and advance" universal service. With that knowledge, the Commission can then determine the extent to which its USF "budget" can be expanded to include funding necessary to recover universal service costs currently recovered though access charges which will, in turn determine the level of access charge reductions that can be implemented.

With regard to those aspects of the "budget" issues that reference phasing in the mobility fund or modifying the safety net additive ("SNA") or local switching support ("LSS"), we respectively reiterate our earlier observations regarding LSS which are equally applicable to universal service expenses that were made in reliance on the SNA, or the expenses incurred by rural wireless ETCs in their deployment of rural mobile services.

There is no basis to limit the reimbursable levels of capital investment and operating expenses incurred by rural rate-of-return carriers, rural wireless ETCs or rural CLECs. If the Commission seeks to limit future expense recovery from LSS or the SNA, or to limit reliance of rural wireless on recovery of new investments from the USF, the Commission should establish guidance with specificity to ensure that: 1) rural providers are fully informed whether a particular investment is allowable by the Commission; and 2) the extent to which the Commission will limit recovery from the USF of any portion of any such investment required for the provision of universal service in a high cost-to-serve area, and the specific basis for any such limitation. This information is essential to rural universal service providers in order to make prudent network investment decisions. The need for specificity in a

prudent planning process goes to the heart of the reason that the Congress directed the Commission to establish "specific and predictable support mechanisms."

## I. Interim Reforms for Price Cap Carriers.

**Issue** *As an interim step, Windstream, Frontier and CenturyLink suggest that the Commission could immediately target support that currently flows to price cap carriers to the highest-cost wire centers within their service territories, using a regression analysis based on the Commission's existing high-cost model to estimate wire center forward-looking costs for both rural and non-rural price cap carriers. We seek comment on this proposal and how it relates to other proposals in the record for comprehensive reform.*

**Response** In the event that the FCC determines to adopt an interim approach to "*target support that currently flows to price cap carriers to the highest-cost wire centers within their service territories,*" there is no rational factual, policy or legal basis to utilize the "*Commission's existing high-cost model to estimate wire center forward-looking costs for both rural and non-rural price cap carriers*." The very model referenced in the proposal is the model that remains the subject of a legal challenge; the prudency of utilizing the model has never been justified.

Even if the Commission had at its disposal a sustainable model, there is no basis to apply any model to rural rate-of-return carriers in the absence of the adoption of a mechanism that ensures that the rural providers of universal service are afforded an opportunity to recover the real-life prudent and lawful costs of providing service in those instances where the model fails to provide sufficient support. The established record and underlying policy reflect the common sense reality that providers of universal service in rural areas cannot advance and maintain the provision of universal service in the absence of sustainable and predictable mechanisms that enable the carriers to recover their real costs.

The single sustainable funding mechanism currently utilized by the Commission in its stewardship of the USF is the determination of funding applied to the rural rate-of-return carriers utilizing the FCC's established rules set forth in Parts 64, 32, 36 and 54. In the event that the Commission proposes a sustainable factual and legal basis upon which to adopt an interim proposal with respect to "*target support that currently flows to price cap carriers to the highest-cost wire centers within their service territories*," the Commission can rationally only apply the same cost-based rules to the areas served by the price cap carriers as those applicable to rate-of-return carriers. The application of these rules provides assurance to both the public and all universal service providers, including the price cap carriers, that the support

distributed is based on a factual determination that is both sufficient and predictable.

In the event that the Commission does further consider an interim proposal regarding the targeting of USF to areas where the price cap carriers serve as incumbent carriers, the Commission must also ensure that any additional funding is needed to bring universal service to the targeted area. In theory, as it should be in practice, the price cap carriers that have sought and obtained ETC status are already providing universal service (as universal service is defined today) throughout their service area in compliance with established law and regulation. In the event that the interim proposal is intended to provide additional funding to support an expanded definition of universal service including broadband network capability, the eligibility for any such interim funding that is to be directed to a single carrier in a specific area should not be limited to the price cap incumbent carrier. As discussed previously, the statute reserves the delegation of the ETC to the relevant state commission.

**Issue** *In addition to combining and distributing HCLS and HCMS, should the Commission also include funds currently provided through LSS and SNA to price cap carriers? Should we also include funds currently provided to price cap carriers through interstate access support (IAS) and frozen ICLS?*

*Should the Commission increase annual HCMS support by an additional amount, such as $100 to $200 million, to be repurposed from ongoing reductions in support for companies that have chosen to relinquish universal service funding? Should we impose a cap on the amount of support a carrier is eligible to receive for a wire center? For instance, should that cap be set at $250 per line per month, similar to the Commission's proposal for a cap in total support for all existing recipients?*

**Response** The questions raised by this set of issues reflects again the frenetic result when the cart is placed before the horse. There is no discernable value in simply "shuffling the deck chairs" or rearranging components of the existing USF mechanisms (e.g., IAS, ICLS, HCLS, HCMS, LSS, and SNA) and suggesting arbitrary per line caps (such as the $250 per line cap referenced above) without first establishing the revised definition of universal service to include broadband capability and determining the funding requirement. On the basis of these necessary facts, the Commission may rationally construct predictable and sufficient mechanisms consistent with the principles set forth in the Act.

**Issue** *What public interest obligations for using funding for broadband-capable networks should apply to carriers receiving support under this approach? Should carriers receiving such support be prohibited from using the funds in areas that are served by an unsubsidized facilities-based broadband provider?*

**Response** This issue was previously addressed above with respect to the Issues raised in Section I.C. 4 of the *Further Inquiry.*

**Issue** *Do any special circumstances exist in the states of Alaska and Hawaii, or Territories and Tribal lands generally, or other areas, that warrant a different approach for price cap carriers serving such areas, if the Commission were to adopt this interim measure?*

**Response** This issue was previously addressed above with respect to the Issues raised in Section I.G. of the *Further Inquiry.*

## II. Intercarrier Compensation

### A. Federal-State Roles

### 1. Federal Framework.

**Issue** *The ABC Plan proposes that the Commission set the framework to reduce intrastate access rates, and recovery to the extent necessary for those reduced intrastate access revenues would come from the federal jurisdiction through a combination of federal SLC increases and federal universal service support.*

*How would this aspect of the ABC Plan affect states in different stages of intrastate access reform – those that have undertaken significant reform and moved intrastate rates to parity with interstate rates, those in the process of reform, and states that have not yet initiated reform?*

**Response** At the outset, we respectively note that any action on the presumption that "*the Commission set the framework to reduce intrastate access rates*" cannot be undertaken lawfully in the absence of lawful preemption of state jurisdiction over state access regulations, which is specifically preserved by Section 251(d)(3) of the Act. Moreover, we respectfully submit that to the extent the Commission's universal service objectives require reductions in intrastate access charges, these objectives may be achieved by providing states substantive and meaningful objectives.

In that regard, the Commission should recognize that both interstate and intrastate access charges are a significant source of revenues relied upon by rural rate-of-return carriers to recover the costs they incur in the provision of universal service. To the extent access charge revenues are reduced or eliminated, a concomitant source of cost recovery is reduced or eliminated. When access rates are reduced or the utilization of access services is diminished, there is no reduction in the real costs of universal service incurred by rural providers.

In order to recover the revenues that a rural provider currently obtains from the provision of access services, there are only two existing alternative sources: increased charges to end users and increased funding from the USF. The increases to charges to rural consumers (whether in the form of rate increases or SLC increases) must be limited to ensure that the resulting charges to rural consumers are "reasonably comparable" as envisioned by the Act.

The issue set forth above focuses on the impact on "*states in different stages of intrastate access reform*" that will result from reducing intrastate access charges and offsetting revenue loss with SLC and USF increases. The framing of the issue appears to presume that the Commission contemplates treating states differently and in a manner that could be more favorable to some and adverse to others.

This presumption, however, suggests another mis-focus that results from rushing and ignoring the existing framework established by statute and rules. If efforts are properly and lawfully undertaken to reduce intrastate access charges and to offset the resulting revenue loss with increases in federal SLC and USF funding, the appropriate processes will ensure equitable treatment of all states and consumers.

Under Section 410 of the Act, the appropriate initial process is the referral of this matter to the Federal-State Joint Board. Irrespective of whether the Commission is determined to achieve reductions in intrastate access charges through state preemption or alternatively pursues the provision of cooperative incentives to the states, the result will impact the jurisdictional separation of common carrier property and expenses between the state and federal jurisdiction.

By following the proper process to identify costs currently recovered from intrastate access charges and to transfer the recovery of those costs to interstate SLC increases and USF, the appropriate and equitable amount of existing intrastate costs will be identified and moved to the interstate jurisdiction for all states on an equitable basis.

**Issue** *The ABC Plan provides a uniform, consistent framework for reform across all states. We seek comment on whether the ABC Plan could be improved by providing states incentives to increase artificially low consumer rates or create state USFs for example through the use of a consumer monthly rate ceiling or benchmark or by requiring states to contribute a certain amount per line of recovery to offset intrastate rate reductions?*

**Response** We observe that the issue set forth above begins with this affirmative statement which, on its face, appears to be an affirmative finding by the Commission

regarding the ABC Plan: "*The ABC Plan provides a uniform, consistent framework for reform across all states.*"

In all likelihood, and in the midst of the pressure to issue the *Further Inquiry* on August 3, only three working days after the filing of the ABC Plan, the Commission probably omitted a few words and intended to state: "*The ABC Plan asserts that it provides a uniform, consistent framework for reform across all states.*"

With regard to the issue set forth above regarding a proposal to require states to "*increase artificially low consumer rates*" or "*requiring states to contribute a certain amount per line of recovery to offset intrastate rate reductions*," we respectively note that these suggestions appear to trod on the rights of individual states and their Commissions.

The Commission has the duty under Section 254 first to determine the definition of universal service with the recommendation of the Joint Board, and to provide sufficient and predictable mechanisms to preserve and advance universal service. To the extent that a common carrier's costs to provide universal service are assigned to the intrastate jurisdiction in accordance with consideration of the recommendations of the Joint Board pursuant to Section 410 of the Act, the responsibility to determine how the intrastate costs will be recovered resides with the States. There is no sustainable basis to require states either to increase intrastate rates they deem just and reasonable or to require states to "contribute a certain amount per line of recovery to offset intrastate rate reductions."

**Issues** *In calculating access recovery, the ABC Plan proposes a $30 "rate benchmark" for price cap carriers, and the Rate-of-Return plan proposes a $25 benchmark, both of which are structured as a ceiling on consumer rate increases (via a federal SLC), to limit increases on consumer rates in states where such rates have already been raised as part of intrastate access reform. Is this ceiling sufficient to mitigate any potential impact on consumers in states that have already begun reforms (and thus are already paying increased local rates and/or state universal service contributions associated with such reform) relative to consumers in states that have not yet undertaken such reforms (for which all recovery would come through the federal mechanism in the ABC Plan)? Should there be different rate benchmarks for different carriers or should there be a single benchmark?*

*In the ABC Plan, in calculating access recovery, the initial consumer monthly rate is taken as a snapshot in time as of January 1, 2012. In lieu of a snapshot, and in order to avoid deterring states from rebalancing local rates and/or establishing state USFs, should the rate used to determine access recovery be the "higher of" (1) the rate as of January 2012 and (2) the rate at future points before annual access recovery amounts are calculated? In this scenario, any increased consumer rates as a result of*

*state reforms, would count toward the benchmark, more accurately reflecting the actual consumer burden at that time.*

*A rate benchmark could also be used as an imputation for a certain level of end-user recovery for intrastate rate reductions, rather than as a ceiling on federal SLC increases. For instance, the Ad Hoc Telecommunications Users Committee proposes a local rate benchmark that could be imputed, rather than used as a ceiling, and commenters propose a range of possible benchmarks from $25-$30. Would an imputation approach better encourage states that currently depend on long distance consumers to help subsidize local phone service for their local consumers to bring consumer rates to levels more comparable to the national average?*

*What would be the appropriate level for such a benchmark, and should it be phased in over time?*

**Response** The Commission's questions set forth in the issues above relate to the reasonableness of imputed rates for the purpose of determining universal service funding. It is not possible either to provide a meaningful response or for the Commission to draw a rational conclusion with respect to reform of USF to include broadband in the absence of a Commission determination regarding how universal service will be defined and what constitutes reasonably comparable rates for consumers of universal services.

**Issue** *Instead of or in addition to a rate benchmark, should states be responsible for contributing a certain dollar amount per line to aid in access recovery? The State Members, for example, suggest that states contribute $2 per line for purposes of universal service. In this scenario, a state would be responsible for recovery of $2 per line of reduced intrastate access revenues, which could be imputed to carriers before they become eligible for federal recovery. Does this approach appropriately balance the interests of consumers in states that already have implemented some reforms, with the associated burden of reform being born by consumers in those states, rather than federal recovery mechanisms? If so, should states that already have a state universal service fund be exempted completely from this per-line contribution, or only to the extent of, for example, the $2 per line state contribution to recovery?*

**Response** The issue set forth above is similar to that raised above in this section of the *Further Inquiry* with respect to the proposal "*requiring states to contribute a certain amount per line of recovery to offset intrastate rate reductions*."
As previously noted, to the extent that costs of common carrier property and expenses are lawfully assigned to the intrastate jurisdiction, the state has the discretion to determine how to recover the costs. In the event that the Commission sought to provide the states an incentive to reduce intrastate access rates, it may (acting after receiving the recommendation of the Joint Board) adopt a rule to move

intrastate access costs to the interstate jurisdiction if the state commission has already reduced access charges or agrees to reduce access charges to a target level recommended by the Commission. The recommendation to leave in the intrastate jurisdiction an amount of intrastate access costs equal to a "$2 per line state contribution" could be adopted in conjunction with this incentive proposal, but the manner in which the "$2 per line" is recovered should be left to each state to decide.

2. State-Federal Framework.

**Issues** *In the alternative, the State Members propose that the states reform intrastate rates and that the Commission facilitate this reform through state inducements rather than a federal framework. We seek comment on this proposal.*

*To address concerns that some states may not reform intrastate access charges, we seek comment on a framework, similar to a proposal in the USF/ICC Transformation NPRM, under which states have three years to develop an intrastate reform plan. Under this alternative, after three years, the Commission would set a transition for reducing intrastate access rates and deny any further federal recovery to offset reduced intrastate revenue.*

*If the Commission adopts the state-federal framework approach advocated by the State Members, how can the Commission best incent states to reform intrastate access rates? Should the Commission match some federal universal service dollars to a state universal service fund for states that are using such a fund to reform intrastate access charges? Such matching could be structured in several different ways, including on a per-line basis (such as $1-2), as a percentage of the state contribution, or on an aggregate state basis. We seek further comment on how such a match should be structured to provide adequate inducements and maintain our commitment to control the size of the federal high cost fund.*

**Response** The issues set forth in this section of Section II A. 2 of the *Further Inquiry* address how best to provide the states incentives to reduce intrastate access charges. We have addressed these issues in response to Section II.A.1 above, and summarize our response as follows:

1. The FCC, acting on a recommendation of the Federal-State Joint Board may provide all states the option to elect to reassign a portion of intrastate costs to the interstate jurisdiction if the State agrees to maintain access intrastate access charges at rates recommended by the State.

2. The option to reassign intrastate costs to the interstate jurisdiction should be equally available to all states (irrespective of whether the

state has already acted to rebalance rates) in order to ensure equity to all states and all consumers.

3. The portion of intrastate costs reassigned to the interstate jurisdiction to encourage states to maintain or reduce intrastate access rates to a level targeted by the FCC must be an amount sufficient to ensure that the costs left in the intrastate jurisdiction do not impose an undue burden on the state or the consumer. The remaining costs assigned to the intrastate jurisdiction should not exceed an amount that can be recovered from the assessment of reasonably comparable rates for universal services (i.e., a benchmark that the FCC may establish consistent with the principles set forth in Section 254 of the Act.

4. The FCC may not direct how each state recovers the remaining intrastate costs of the telecommunications provider of universal service or whether the state maintains or establishes its own state fund to enhance the provision of universal service within its state in a manner consistent with Section 254(f) of the Act.

**Issues** *Under the framework of leaving reform of intrastate rates initially to the states, the Commission would begin immediate reforms of interstate access charges. We seek comment on a glide path for the Commission to reduce all interstate access rate elements. Should the length of the rate transition vary, providing three years for price cap carriers and five years for rate-of-return carriers, given that rate of return carriers' interstate access rates are higher at the outset?*

*What should the transition be for competitive LECs? Would an approach that provides different transitions for different types of carriers, whether competitive, price cap or rate-of-return LEC raise any policy concerns?*

**Response** The rate of transition for rural rate-of-return carriers must be derived by the Commission on the basis of the amount of USF the Commission "budgets" to provide recovery of the costs that are currently recovered from interstate access charges. There is no basis upon which to determine a transition period in the absence of clarity of the provision of a sufficient and predictable mechanism to recover the costs of providing universal service.

With regard to price cap LECs and competitive LECs ("CLECs"), there is no rational basis to establish a mandatory transition period distinct from that applied to the rural rate-of-return carriers. Because of the "lighter regulation" afforded to price

cap LECs and CLECs with regard to the scrutiny of their costs of providing services and the establishment of their rates, these carriers should be free to reduce their rates at a faster pace if they elect to do so.

For similar reasons, the provision of USF to recover costs formerly recovered by access charges prior to mandated reductions should be available to price cap companies and CLECs on the same basis of cost demonstration that USF is made available to rate-of-return carriers.

The application of the cost accounting and assignment rules set forth in Sections 64, 32, 36 and 69 of the Commission's Rules. The accounting of the costs is subject to Commission scrutiny and audit. The determination of whether an investment or expense incurred by a rate-of-return carrier is recoverable is subject to the Commission's authority.[71] The Commission has the authority and the tools to ensure that the costs recovered by a rate-of-return carrier from interstate access charges today are necessary and reasonable. If the Commission mandates a reduction in access charges, it can literally trace the costs of a rate-of-return carrier that are no longer recovered from access and, accordingly, the amount of additional USF support required to ensure a sufficient and predictable mechanism for the carrier to recover its costs.

In the absence of applying the same cost accounting rules (or a reasonable surrogate framework) to price cap carriers and CLECs, the Commission would have no way to determine what amount of USF was necessary to offset the cost recovery needed to maintain the provision of universal service by these carriers who should be afforded the same opportunity to recover their costs as that afforded to rural rate-of-return carriers.

Moreover, the access charges established for rural CLECs pursuant to Section 61.26(e) of the Commission's rules were based on specific Commission findings that justified higher access charges for rural CLECs on the basis of their higher costs.[72] These rural CLECs have relied on the Commission's findings and resulting

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[71] *See, e.g.*, In the Matter of Sandwich Isles Communications, Inc. Petition for Declaratory Ruling, WC Docket No. 09-133, released September 29, 2010, discussion of "Used and Useful Analysis" at para. 11-16. The RBA also notes that the Commission has reportedly expended over $ 20 million in recent years conducting audits of rural rate-of-return regulation. There is no indication on the record of any audit findings of systemic "imprudent investment" or "bloated expenses" to support across the board cuts in the cost recovery of rate-of-return regulated rural carriers.

[72] *Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923 (2001).

rules in making investment decisions that have resulted in the expansion of service in rural unserved and underserved areas. It would be contrary to policy and law to deprive the rural CLECs of an opportunity to recover the costs of expenses they have incurred in reliance on the Commission's rules.

**Issue** *We also seek comment on whether the Commission should reduce originating interstate access rates and, if so, whether we should require the reductions at the same time or only after terminating rates have been reduced.*

**Response** With respect to the provision of universal service, it is essential for the Commission to address originating access charges. The emphasis of the ABC Plan on terminating access charges only does not reflect a prudent evaluation of the public interest, but rather the business interests of individual parties to the proposal that are understandably focused not on universal service, but on reducing their terminating expenses.

From the perspective of providing universal service, a rural provider has three sources of revenues from which to recover the costs of providing universal service as identified by the application of the Commission's Rules, Parts 64, 32, and 36. These three sources are: (A) The rates charged to end user customers; (B) Revenues from interconnection and access charges (both originating and terminating); and (C) USF. The cost recovery framework was developed for a voice-driven digital technology prior to the evolution of wireless and internet and the resulting migration of voice services.

Continued reliance on both originating and terminating access services for the recovery of the costs of providing universal service should be addressed concurrently.

Moreover, the costs assigned to recovery from originating access have proven an impediment to the fulfillment of the underlying policy set forth in Section 254(g) of the Act intended to foster the provision of comparable interexchange rates and interstate services to rural consumers. Irrespective of the intent of this provision of the Act, we respectfully suggest that the Commission not only should undertake consideration of originating access charges, but that it should also initiate a fact-based inquiry regarding whether its existing rules have sufficiently ensured the fulfillment of the intent of Section 254(g).

## B. Scope of Reform

**Issue** *We seek comment on the approach outlined in the ABC Plan to reform substantially terminating rates for end office switching while taking a more limited approach to reforming certain transport elements and originating access. Would any problematic incentives, such as arbitrage schemes, arise from or be left in place by such an approach, and if so, what could be done to mitigate them?*

**Response** We respectfully maintain that a meaningful response to the issue of deferring the revision of transport and tandem switching rates requires a more thorough fact-based consideration than that afforded by both the time allowed for comment in response to the *Further Inquiry* and the broad scope of issues raised in the *Further Inquiry*. The evolution of the network to IP interconnection to universal service providers should be incorporated into the scope of the consideration of these issues. The reform of interconnection terms and conditions associated with interconnection to universal service network providers in high cost area must fully address the technical aspects of evolving interconnection arrangements. In this regard, the issue of the utilization of tandem switching and transport arises in the context of the migration of interexchange traffic to IP. The deferral of consideration of the transit and tandem access elements may be detrimental to the provision of universal service if there is an unwarranted expectation that these access elements can be relied upon to provide essential cost recovery for the provision of universal service.

With respect to originating access, we respectfully suggest that consideration of originating access should not be deferred for the reasons addressed in Section II. A. 2, above.

C. Recovery Mechanism.

*We seek comment on the appropriate recovery mechanism for ICC reform, including the ABC Plan's and the Joint Letter's recovery proposals. We also seek comment on the relative merits and incentives for carriers associated with an alternative approach that provides more predictable recovery amounts, such as the alternative described below.*

1. Federal-State Role in Recovery.

**Issue** *As noted above, the ABC Plan proposes to shift recovery for reduced intrastate access charge revenues to the federal jurisdiction. Could the Commission achieve more comprehensive reform of intercarrier compensation rate elements if recovery is achieved through a federal-state partnership? We seek comment above on different means by which states could share responsibility for recovery of reduced intrastate access revenues.*

**Response** We respectfully incorporate in response to this issue our responses set forth above regarding concerns with preemption and recommendations for a "federal-state partnership" approach to reductions in intrastate access charges. These responses are set forth above in Section II. A. 1. and 2.

2. Price Cap Carriers.

**Issue** *For price cap carriers electing to receive support from the transitional access replacement mechanism, the ABC Plan's recovery proposal includes annual true-ups to adjust for possible increases or decreases in minutes of use. Although minutes of use for incumbent LECs have been declining, the ABC Plan's proposal establishing how VoIP minutes are included in the intercarrier compensation system prospectively and addressing phantom traffic could cause minutes of use to flatten or possibly even increase. In addition, the ABC Plan would treat all VoIP traffic as interstate, which potentially could reduce the minutes billed at intrastate access rates (depending upon existing payment practices). Thus the true-up approach could result in the need for additional recovery, including additional federal universal service funding. We seek comment on alternatives to the true-up process.*

*For example, as an alternative to true ups, we seek comment on a baseline for recovery that would be 2011 access revenues subject to reform, reduced by 10% annually to account for decline in demand (i.e., 90% of 2011 revenues in year one (2012), 81.0% in year two (2013), 72.9% in year three (2014), 65.6% in year four (2015), etc.). This (or a similar framework that may be suggested by commenters) would be a brightline, predictable approach that would not include true-ups, regardless of whether demand declines more quickly or more slowly. If carriers reduce costs or are more efficient, this approach would enable carriers to realize the benefits of these savings.*

**Response** As noted in response to a similar issue raised above in Section II.A.2 of the *Further Inquiry*, we submit that all carriers should be treated similarly with respect to an opportunity to recover costs to provide universal service from additional USF as a result of the loss of revenue from future access charge reductions. The Commission's framing of the issue above clearly discloses the challenge facing the Commission – how will it rationally determine the amount of USF that is sufficient, but not excessive, for a price cap carrier that elected in its own business interests to move to price cap regulation.

We respectfully reiterate that the Commission should determine the amount of additional funding for price cap carriers on the same basis of cost demonstration that USF is made available to rate-of-return carriers pursuant to the application of the cost accounting and assignment rules set forth in Sections 64, 32, 36 and 69 of the Commission's Rules. The utilization of this process will not only ensure the

Commission and the public that any distribution of additional USF is "sufficient" and not excessive, but this process is also consistent with the initial price cap regulation framework that afforded the price cap carriers a safety net that enabled them to adjust their price cap rates based on their actual costs in the event that access demand units fell causing their earnings to fall below an established floor.

3. Rate of Return Carriers.

**Issue** *We seek comment below on an alternative approach for recovery (or other approaches that commenters might suggest) that would maintain the predictable revenue stream associated with rate of return principles while also providing carriers with better incentives for efficient investment and operations. This option would provide a fixed percentage of recovery (which could be 100%) of all reduced terminating access charges (both intrastate and interstate) based on year 2011 revenues, but without true-ups to reflect changes in the revenue requirement historically used for interstate access charges. This recovery mechanism would lock in revenue streams, including intrastate access revenues, which have been declining annually for many interstate rate-of-return carriers. It thus provides more predictable revenue recovery while also providing incentives for carriers to reduce costs and realize the benefits of these cost savings. The eligible recovery amount would be recovered through end-user charges and universal service support as described in the Joint Letter's proposal. We also seek comment on the duration of recovery funding under this alternative. Should it be phased out over time following the completion of rate reforms, such as with the loss of demand?*

**Response** The proposal set forth above by the Commission is consistent with the incentive proposal for rate-of-return carriers set forth in the Comments of the RBA submitted on April 18.[73] While an incentive alternative for rural rate-of –return carriers should be adopted, the provision of universal service is more critical. While the proposed incentive structure may provide a valuable alternative, the existence of the incentive framework does not alter the reality that it may not effectively preserve and advance universal service in some high cost areas.

Accordingly, the Commission should not impose this incentive alternative on all rural rate-of-return carriers. We fully recognize the Commission's concern with ensuring that universal service providers operate efficiently and reduce costs where possible. For those rural rate-of-return carriers that do not elect the proposed incentive framework, the Commission has pursuant to its rules the right to ensure that the expenses incurred by the carrier are prudent, just and reasonable.

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[73] *See, Comments of the Rural Broadband Alliance,* WC Docket No. 10-90 et al., Attachment Section III B., pp. 5-6.

4. Reciprocal Compensation.

**Issue** *The ABC Plan's proposal provides recovery for reductions in reciprocal compensation rates to the extent they are above $0.0007, but the ABC Plan estimates on the impact of the federal universal service fund do not include estimated recovery from reciprocal compensation. We ask whether providing federal universal service support for reductions in reciprocal compensation rates strikes the appropriate policy balance as we seek to control the size of the universal service fund, and whether there are alternatives to such an approach.*

**Response** From the perspective of a rural rate-of-return carrier, the costs of providing universal service, as we have previously noted, are currently borne by three sources: charges to customer, interconnection and access charges and USF. In order to provide universal service, the carrier must have an opportunity to recover its costs. If the revenues relied upon from any source are reduced, the costs must be recovered from one of the remaining two sources. Accordingly, if interconnection rates are decreased, the otherwise lost revenues must be recovered from USF unless customer rates can be increased without violating the "reasonably comparable" standard.

## 5. Originating Access

**Issue** *If the Commission were to address originating access as part of comprehensive reform, should the Commission treat originating access revenues differently from terminating access revenues for recovery purposes since, in many cases, the originating incumbent LEC's affiliate is offering the long distance service? For example, is it necessary to provide any recovery for the originating access that an incumbent LEC historically charged for originating calls from the retail long distance customers of its affiliate?*

*Alternatively, should recovery for such originating access take the form of a flat per-customer charge imposed on the incumbent LEC's long distance affiliate for each of its presubscribed customers? Should such a flat originating access replacement charge be used for recovery of all originating access revenues more generally? How would any of these approaches be implemented? Should any flat originating access replacement charge differ by end-user customer class (such as residential vs. business), by level of demand, or otherwise?*

**Response** With respect to rural rate-of-return carriers, the suggestion that there is no need "*to provide any recovery for the originating access that an incumbent LEC*

*historically charged for originating calls from the retail long distance customers of its affiliate*" disregards both the application of the Part 64 rules separating regulated and deregulated costs and cross subsidization principles.

Irrespective of whether the rural carrier does or does not have an affiliate long distance provider, it has real costs that it incurs to provide universal service that, pursuant to the Commission's rules, are currently recovered from originating access. In those instances where the originating carrier is an affiliate of the rural LEC, the affiliate pays access as any other interexchange carrier pays.

If the Commission undertakes to reduce or eliminate originating access as part of comprehensive reform, it would be inequitable to deny universal service cost recovery to the rural rate-of-return carrier simply because a portion of originating access had been assessed to the carrier's affiliate. The result of this suggestion is clear and inequitable. All other interexchange carriers receive the benefit of reduced charges and walk away from the process with a windfall and no consumer obligations. But, a rural rate-of-return LEC and its affiliate are expected to dedicate the access savings to recovering the costs of providing universal service.

Ironically, it is the long distance affiliates of rural rate-of-return carriers (often operating as community-owned cooperatives) that are most likely to swiftly pass on the access savings to their rural consumers.

As noted earlier in response to issues raised in Section II.A.2., the public interest would be well served by the Commission's inquiry into whether its existing rules have sufficiently ensured the fulfillment of the intent of Section 254(g), and the impact of rural carrier originating access charge rates on the objective to make available the provision of interexchange and interstate services to rural consumers at "comparable rates."

The proposal set forth in the issue above suggesting that *"recovery for such originating access take the form of a flat per-customer charge*" unfortunately reflects further disregard for the fundamental policy set forth in Section 254(g). How is it possible that the Commission could entertain a proposal that would further exacerbate the differences in rates charged for interexchange services to rural consumers by suggesting that rural consumers should pay more when making long distance calls? Congress understood when it adopted Section 254(g) that communications between an urban consumer and a rural consumer utilize multiple connected networks to complete the call. The costs of the call do not change depending on whether the communication was initiated by the urban consumer or the rural consumer, and Congress sought to ensure that the rural consumer was afforded rates comparable to those that were available to the urban consumer. The Commission's proposal to recover universal service costs by charging the rural consumer more is inapposite.

**Issue** *We seek the following data to help us evaluate originating access reform:*

- *Separately for price cap and rate-of-return incumbent LECs, the number of (1) long distance minutes that the average customer originates; (2) 8YY minutes that the average customer originates; and (3) long distance and 8YY minutes that the average customer receives (terminating minutes); and*
- *Whether the ratio of originated long distance minutes to originated 8YY minutes varies materially with the level of the customers' expenditure on telecommunications services.*

**Response** Although the RBA does not have this information, our members have repeatedly offered to provide the Commission with relevant proprietary data on a confidential basis.

D. Impact on Consumers.

**Issue** *We seek comment on how to ensure that consumers realize benefits of reduced long distance and wireless rates as part of intercarrier compensation reform. The ABC Plan attaches a paper by Professor Jerry Hausman analyzing the consumer benefits of intercarrier compensation reform. Should the potential realization of consumer pass through benefits from intercarrier compensation reform be left to the market, as Professor Hausman asserts, or should any steps be taken to ensure that such benefits are realized by consumers? If so, what steps should be taken?*

**Response** Our initial understanding of the impact of the ABC Plan is that interexchange carriers experience an annual benefit of hundreds of millions of dollars with no assurance of any benefit to consumers. Not surprisingly, then, we are concerned that rural rate-of-return carriers will not be able to fully recover the lawful expenses they incur in the provision of universal service while the large carriers that connect communications between urban and rural networks walk away with their windfall.

The rural rate-of-return carrier industry has been given assurances that the reform framework advocated in the Joint Letter filed on July 29, 2011 will provide rural rate-of-return carriers with full rate-of-return cost recovery and a USF that is not capped. While we are hopeful that the promises made will be fulfilled, we are concerned with the reality of how these promised objectives would be achieved.

We fully recognize the limitations with respect to the tools available to the Commission to ensure that all consumers benefit from intercarrier compensation reform and that the reform does not result in harm to any consumers, including rural consumers. We respectfully remind the Commission that earlier Commissions facing similar issues developed transitional support mechanisms (such as "long

term support") when implementing access structure changes. These mechanisms provided a balance to ensure the protection of universal service and all consumers while at the same time providing benefits to larger non-rural carriers. The Commission may consider the establishment of similar mechanisms to ensure that there is full recovery of lawfully established costs to provide universal service in rural areas and to ensure that the intent of Section 254(g) of the Act is fulfilled.

In this regard, the Commission has noted (but not acted on) the following:

> Given the changes in consumer buying patterns, the competitive marketplace, and the variety of pricing plans offered by carriers today, stand-alone local telephone rates may no longer be the most relevant measure of whether rural and urban consumers have access to reasonably comparable telecommunications services at reasonably comparable rates.[74]

> Although only local telephone service is supported by the high-cost universal service mechanism at this time, section 254(b)(3) of the Act provides that consumers in all regions of the nation should have access to telecommunications and information services, *including advanced services and interexchange services*, at reasonably comparable rural and urban rates. (Footnote omitted). In light of the fact that most consumers subscribe to both local and long distance services from the same provider, would it be more consistent with the statute, and the Commission's obligation to advance universal service, (footnote omitted) to define reasonably comparable rates for purposes of the non-rural mechanism in terms of combined local and long distance rates?[75]

In order to ensure that consumers are well served, the FCC may want to consider taking the opportunity to consider how this proceeding provides an opportunity for the Commission to act to address the universal service considerations raised nearly two years ago.

**Issue** *The ABC Plan permits incumbent carriers to increase the consumer SLC up to $9.20 before increasing the multiline business SLC, although multiline business SLCs potentially could increase once consumer SLCs reach that level. To decrease the potential burden on consumers and the federal universal service fund, should multiline business customers also see a modest SLC increase and, if so, how much?*

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[74] *In the Matter of High-Cost Universal Service Support*, WC Docket No. 05-337, and In *the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, **Further Notice of proposed Rulemaking,** released **December** 15, 2009, para. 15.
[75] *Id*., at para. 18.

*The ABC Plan permits incumbent carriers to increase consumer SLC rates $0.50-0.75 per year for five years or until the consumer's rate reaches the rate benchmark of $30. Similarly, the Joint Letter permits incumbent carriers to increase consumer SLC rates $0.75 per year for six years or until the consumer's rate reaches the rate benchmark of $25. Professor Hausman's paper indicates that companies are constrained by competition, which could mean that companies may not be able to increase SLC rates on consumers. We seek comment on the actual likely consumer impact of SLC increases, in the aggregate and with as much granularity (e.g., by company, by type of state, by specific state) as can be provided. We also seek comment on proposals that the need for any recovery should be based on the carrier's showing of need based on its operations more broadly.*

**Responses** These issues address the prudency of different levels of SLCs and the impact of the SLC increases on consumers. We respectfully again suggest that this inquiry should begin with the Commission's determination of the revised definition of universal service and a determination of the "reasonably comparable" level of rates for universal service. In the absence of the determination of these facts, it is not possible to provide a response that can accurately address whether proposed SLC levels will result in rates that remain "reasonably comparable."

It is ironic and alarming that within a proceeding focused on the transformation of networks to broadband and the associated universal service requirements, the *Further* Inquiry in several instances focuses on basic local service rates including SLC levels instead of reasonably comparable broadband service and reasonably comparable rated for universal broadband connectivity.